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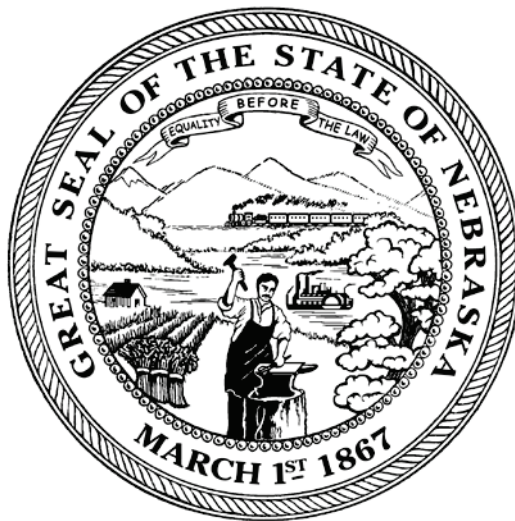


# REVISED STATUTES OF NEBRASKA

## 2018 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED  
BY THE  
REVISOR OF STATUTES

VOLUME 2  
CHAPTERS 23 - 45, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2018

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Revisor of Statutes

For the benefit of the  
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## CHAPTER 23

### COUNTY GOVERNMENT AND OFFICERS

Article.

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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

23-135.01. Claims; false statements or representations; penalties.

##### (c) COMMISSIONER SYSTEM

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## Section

## (e) COUNTY ZONING

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## (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

**23-135.01 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) 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.

**Cross References**

For discontinuance of township organization, see sections 23-292 to 23-299.

**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.

(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

23-204. Supervisor districts; formation; election of supervisors.

(b) COUNTY BOARDS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

23-277. County supervisors; quorum.

(c) 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

**23-204 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.

## (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.

## (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.

(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.

**ARTICLE 9**  
**BUDGET**

(a) APPLICABLE ONLY TO COUNTIES

Section

23-914. Unexpended balances; expenditure; limitation; county board powers.

(a) APPLICABLE ONLY TO COUNTIES

**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

23-1118. Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.

**23-1118 Employees of certain counties or municipal counties; retirement benefits; establish; approval of voters; contribution rates; funds; investment; employees, defined; reports.**

(1)(a) Unless the county has adopted a retirement system pursuant to section 23-2329, the county board of any county having a population of one hundred fifty thousand inhabitants or more, as determined by the most recent federal decennial census, may, in its discretion and with the approval of the voters, provide retirement benefits for present and future employees of the county. The cost of such retirement benefits shall be funded in accordance with sound actuarial principles with the necessary cost being treated in the county budget in the same way as any other operating expense.

(b) Except as provided in subdivision (c) of this subsection, each employee shall be required to contribute, or have contributed on his or her behalf, an amount at least equal to the county's contribution to the cost of any such retirement program as to service performed after the adoption of such retirement program, but the cost of any benefits based on prior service shall be borne solely by the county.

(c) In a county or municipal county having a population of two hundred fifty thousand or more inhabitants but not more than five hundred thousand inhabitants, as determined by the most recent federal decennial census, the county or municipal county shall establish the employee and employer contribution rates to the retirement program for each year after July 15, 1992. The county or municipal county shall contribute one hundred fifty percent of each employee's mandatory contribution, and for an employee hired on or after July 1, 2012, the county or municipal county shall contribute at least one hundred percent of each such employee's mandatory contribution, except that an employee receiving a one hundred fifty percent employer contribution under this subdivision may irrevocably elect to switch to a one hundred percent contribution for all future contributions. The combined contributions of the county or municipal county and its employees to the cost of any such retirement program shall not exceed sixteen percent of the employees' salaries.

(2) Before the county board or council provides retirement benefits for the employees of the county or municipal county, such question shall be submitted at a regular general or primary election held within the county or municipal county, and in which election all persons eligible to vote for the officials of the county or municipal county shall be entitled to vote on such question, which shall be submitted in the following language: Shall the county board or council provide retirement benefits for present and future employees of the county or municipal county? If a majority of the votes cast upon such question are in favor of such question, then the county board or council shall be empowered to provide retirement benefits for present and future employees as provided in this section. If such retirement benefits for present and future county and municipal county employees are approved by the voters and authorized by the county board or council, then the funds of such retirement system, in excess of the amount required for current operations as determined by the county board or council, may be invested and reinvested in the class of securities and investments described in section 30-3209.

(3) As used in this section, employees shall mean all persons or officers devoting more than twenty hours per week to employment by the county or municipal county, all elected officers of the county or municipal county, and such other persons or officers as are classified from time to time as permanent employees by the county board or council.

(4) The county or municipal county may pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the county or municipal county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The county or municipal county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The county or municipal county shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the member or a combination of a reduction in salary and offset against a future salary increase. Member contributions picked up shall be treated in the same manner and to the same extent as member contributions made prior to the date picked up.

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

(a) The chairperson of the county board or council with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board a report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;

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

(vi) The form and nature of investments;

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

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

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

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the county board of a county or council of the municipal county with a retirement plan established pursuant to this section shall cause to be prepared an annual report and the chairperson shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the county board or council does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the county or municipal county. All costs of the audit shall be paid by the county or municipal county. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1961, c. 97, § 1, p. 327; Laws 1967, c. 257, § 3, p. 680; Laws 1967, c. 129, § 1, p. 412; Laws 1984, LB 216, § 1; Laws 1985, LB 353, § 2; Laws 1992, LB 672, § 30; Laws 1995, LB 369, § 1; Laws 1995, LB 574, § 30; Laws 1998, LB 1191, § 22; Laws 1999, LB 795, § 10; Laws 2001, LB 142, § 31; Laws 2011, LB474, § 10; Laws 2012, LB867, § 1; Laws 2014, LB759, § 15; Laws 2015, LB41, § 1; Laws 2015, LB126, § 1; Laws 2017, LB415, § 10.

## ARTICLE 12

### COUNTY ATTORNEY

Section

23-1201. County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

**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.

## 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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

## 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.  
Effective date July 19, 2018.

**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 of 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.  
Effective date July 19, 2018.

**ARTICLE 15**  
**REGISTER OF DEEDS**

Section  
23-1503.01. Instrument submitted for recording; requirements.

**23-1503.01 Instrument submitted for recording; requirements.**

(1) Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least three inches by eight and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument. No attachment or affirmation shall be used in any way to cover any information or printed material on the instrument.

(2) Printed forms primarily intended to be used for recordation purposes shall have a one-inch margin on the two vertical sides and a one-inch margin on the bottom of the page. Nonessential information such as page numbers or customer notations may be placed within the side and bottom margins.

(3) All instruments submitted for recording shall be on paper measuring at least eight and one-half inches by eleven inches and not larger than eight and one-half inches by fourteen inches. The instrument shall be printed, typewritten, or computer-generated in black ink on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. The instrument shall be sufficiently legible to allow for a readable copy to be reproduced using the method of reproduction used by the register of deeds. A font size of at least eight points shall be presumed to be sufficiently legible. Each signature on an instrument shall be in black or dark blue ink and of sufficient color and clarity to ensure that the signature is readable when the instrument is reproduced. The signature may be a digital signature or an electronic signature. The name of each party to the instrument shall be typed, printed, or stamped beneath the original signature. An embossed or inked stamp shall not cover or otherwise materially interfere with any part of the instrument.

(4) This section does not apply to:

- (a) Instruments signed before August 27, 2011;
- (b) Instruments executed outside of the United States;
- (c) Certified copies of instruments issued by governmental agencies, including vital records;
- (d) Instruments signed by an original party who is incapacitated or deceased at the time the instruments are presented for recording;
- (e) Instruments formatted to meet court requirements;
- (f) Federal and state tax liens;
- (g) Forms prescribed by the Uniform Commercial Code; and
- (h) Plats, surveys, or drawings related to plats or surveys.

(5) The changes made to this section by Laws 2011, LB254, do not affect the duty of a register of deeds to file an instrument presented for recordation as set forth in sections 23-1506 and 76-237.

**Source:** Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1; Laws 2011, LB254, § 1; Laws 2017, LB535, § 1.

**ARTICLE 16**  
**COUNTY TREASURER**

## Section

- 23-1602. Warrants; nonpayment for want of funds; endorsement; interest.
- 23-1603. Violations; penalty.
- 23-1605. Semiannual statement; publication.
- 23-1612. County offices; audit; refusal to exhibit records; penalty.

**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.

Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**23-1605 Semiannual statement; publication.**

The county treasurer shall, during the months of July and January of each year, cause to be published in a legal newspaper, and in counties having more than two hundred fifty thousand inhabitants in a daily legal newspaper printed in the county, or if there is no legal newspaper published in the county, in a legal newspaper of general circulation within the county, a tabulated statement of the affairs of the county treasurer's office, showing the receipts and disbursements of the office for the last preceding six months ending June 30 and December 31.

**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.  
 Effective date July 19, 2018.

**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.  
 Effective date July 19, 2018.

**ARTICLE 17**

**SHERIFF**

(b) MERIT SYSTEM

Section

- 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.

(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 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.
- 23-2322. 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.
- 23-2334. Retirement; prior service retirement benefit; how determined.

**23-2301 Terms, defined.**

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment.

(b) For a member hired prior to January 1, 2018, the mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used.

(c) For a member hired on or after January 1, 2018, or rehired on or after January 1, 2018, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the mortality assumption used for purposes of converting the member cash balance account shall be a unisex mortality table that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table and actuarial factors in effect on the member's retirement date will be used to calculate the actuarial equivalency of any retirement benefit;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or be of a long-continued and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred fifty thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(19) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(20) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(21) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(22) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(23) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(24) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(25) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(26) Prior service means service prior to the date of adoption of the retirement system;

(27) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(28) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(29) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(30) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(31) Retirement board or board means the Public Employees Retirement Board;

(32) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(33) Retirement system means the Retirement System for Nebraska Counties;

(34) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(35) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(36) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(37) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2;



Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2; Laws 2015, LB41, § 2; Laws 2017, LB415, § 11.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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 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.

Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

### **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) Except as provided in subdivision (2)(b) of section 23-2319.01, the employee cash balance account within the County Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (20) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (20) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

**Source:** Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2; Laws 2010, LB950, § 2; Laws 2011, LB509, § 6; Laws 2012, LB916, § 6; Laws 2017, LB415, § 12.

**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. The investment options shall include, but not be limited to, the following:

(a) 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;

(b) 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;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) 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;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) 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

(h) 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, all of his or her funds shall be placed in the option described in subdivision (b) 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. Operative date July 19, 2018.

**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 balanced account option described in subdivision (1)(d) of section 23-2309.01. 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.  
Operative date July 19, 2018.

**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 may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(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.

**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 his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The interest rate and actuarial factors in effect on the member's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii)

the interest rate used to calculate the retirement benefits for cash balance plan members.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substan-

tially 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.

**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 April 1 of the year following the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the

member attains the age of seventy and one-half years. 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.

**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)(a) 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, except as provided in subdivision (b) of this subsection, 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.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(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 Employees 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.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **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. Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

### **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 subdivi-

sion (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.  
Operative date July 19, 2018.

**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 23-2503. Civil Service Commission; formation.

## Section

- 23-2504. Commission; members; qualifications; number; election; vacancy; how filled.  
 23-2506. Commission; meetings; notice; rules of procedure, adopt; chairperson.  
 23-2507. Commission; powers; duties.  
 23-2510. Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.  
 23-2514. Chief deputy or deputy; removal; effect on salary.
- (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

**23-2503 Civil Service Commission; formation.**

In any county having a population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census, there shall be a Civil Service Commission which shall be formed as provided in sections 23-2501 to 23-2516. A county shall comply with this section within six months after a determination that the population has reached four hundred thousand inhabitants or more as determined by the most recent federal decennial census.

**Source:** Laws 1971, LB 921, § 3; Laws 2016, LB742, § 9; Laws 2017, LB508, § 1.

**23-2504 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, surveyor, 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 sections 23-2501 to 23-2516 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 sections 23-2501 to 23-2516 and one employee member of the commission shall be a Republican elected by the Republican-registered employees subject to sections 23-2501 to 23-2516. 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.

At the expiration of the initial term of office, a successor member shall be elected or appointed as provided in sections 23-2501 to 23-2516 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. In the event 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.  
Effective date July 19, 2018.

**23-2506 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 sections 23-2501 to 23-2516. 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.  
Effective date July 19, 2018.

**23-2507 Commission; powers; duties.**

(1) The commission may prescribe the following: (a) General employment policies and procedures; (b) regulations for recruiting, examination, and certifi-

cation of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all employees governed by sections 23-2501 to 23-2516; (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 sections 23-2501 to 23-2516; (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 sections 23-2501 to 23-2516 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 sections 23-2501 to 23-2516.

(6) All acts of the commission pursuant to the authority conferred in this section shall be binding on all county department heads governed by sections 23-2501 to 23-2516.

**Source:** Laws 1971, LB 921, § 7; Laws 2018, LB786, § 11.

Effective date July 19, 2018.

**23-2510 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.

Effective date July 19, 2018.

**23-2514 Chief deputy or deputy; removal; effect on salary.**

Notwithstanding any other provision of sections 23-2501 to 23-2516, 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 23-2510 and 23-2511, 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.  
Effective date July 19, 2018.

(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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**ARTICLE 32****COUNTY ASSESSOR**

## Section

23-3211. Law enforcement officer's residential address; withheld from public; application; form; county assessor and register of deeds; duty.

**23-3211 Law enforcement officer's residential address; withheld from public; application; form; county assessor and register of deeds; duty.**

Unless requested in writing, the county assessor and register of deeds shall withhold from the public the residential address of a law enforcement officer who applies to the county assessor in the county of his or her residence. The application shall be in a form prescribed by the county assessor and shall include the name, address, and certified law enforcement identification number of the law enforcement officer and the parcel identification number for his or her residential address. The county assessor shall notify the register of deeds regarding the receipt of a complete application. The county assessor and the register of deeds shall withhold the address of a law enforcement officer who complies with this section for five years after receipt of a complete application. The law enforcement officer may renew his or her application every five years upon submission of an updated application.

**Source:** Laws 2017, LB624, § 1.

**ARTICLE 33**  
**COUNTY SCHOOL ADMINISTRATOR**

## Section

23-3302. Repealed. Laws 2018, LB377, § 87.

**23-3302 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**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.

(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.  
Operative date July 19, 2018.

**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.
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#### ARTICLE 2

#### SUPREME COURT

##### (a) ORGANIZATION

Section

24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.

##### (a) ORGANIZATION

#### **24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.**

On July 1, 2016, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-one thousand nine hundred seventy-four dollars and seventy-three cents. On July 1, 2017, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-three thousand six hundred ninety-three dollars and ninety-seven cents. On January 1, 2019, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-six thousand two hundred ninety-nine dollars and thirty-eight cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

**Source:** Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws

1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1; Laws 2017, LB647, § 1.

**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

- 24-348. 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.

In the fourth district there shall be sixteen 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.  
Effective date July 19, 2018.

#### 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.  
Operative date July 19, 2018.

(c) CLERK

**24-337 Repealed. Laws 2018, LB193, § 97.**  
Operative date July 19, 2018.

(e) UNCALLED-FOR FUNDS; DISPOSITION

**24-348 Repealed. Laws 2018, LB193, § 97.**  
Operative date July 19, 2018.

**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.

## (a) JUDGES RETIREMENT

**24-701 Terms, defined.**

For purposes of the Judges Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment.

(b) For a judge hired prior to July 1, 2017, the determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations.

(c) For a judge hired on or after July 1, 2017, or rehired on or after July 1, 2017, after termination of employment and being paid a retirement benefit, the determinations shall be based on a unisex mortality table and an interest rate specified by the board. Both the mortality table and the interest rate shall be recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the judge's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return;

(2) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(3) Board means the Public Employees Retirement Board;

(4)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(5) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include

current service for which member contributions are not made or are withdrawn and not repaid;

(6) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(7)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July 1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(8) Final average compensation for a judge who becomes a member prior to July 1, 2015, means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service. Final average compensation for a judge who becomes a member on and after July 1, 2015, means the average monthly compensation for the five twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than five twelve-month periods, the average monthly compensation for such judge's period of service;

(9) Fund means the Nebraska Retirement Fund for Judges;

(10) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(11) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(12) Initial benefit means the retirement benefit calculated at the time of retirement;

(13) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served



in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(14) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(15) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(16) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(17) Normal retirement date means the first day of the month following attainment of age sixty-five;

(18) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to

subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(19) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(20) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(21) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(22) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(23) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(24) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(25) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(26) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement

system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

**Source:** Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17; Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10; Laws 2015, LB468, § 1; Laws 2016, LB790, § 2; Laws 2017, LB415, § 18.

#### 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.  
Operative date July 19, 2018.

#### 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.

Operative date July 19, 2018.

#### **24-708 Retirement of judge; when; deferment of payment; board; duties.**

(1) Except as provided in section 24-721, a judge may retire upon reaching the age of sixty-five years and upon making application to the board. Upon retiring each such judge shall receive retirement annuities as provided in section 24-710.

(2) Except as provided in section 24-721, a judge may retire upon reaching the age of fifty-five years and elect to receive a reduced monthly retirement income in lieu of a deferred vested annuity. The judge may request that the reduced monthly retirement income commence at any date, beginning on the first day of the month following the actual retirement date and ending on the normal retirement date. The amount of the reduced monthly retirement income shall be calculated based on the length of creditable service and average compensation at the actual retirement date. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-four years, the monthly payments shall be reduced by three percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-three years, the monthly payments shall be reduced by six percent. When a judge has elected to receive a reduced monthly retirement income to commence at the age of sixty-two years, the monthly payments shall be reduced by nine percent. When a judge has elected to receive a reduced monthly retirement income to commence prior to the age of sixty-two years, the monthly payments shall be further reduced to an amount that is actuarially equivalent to the amount payable at the age of sixty-two years.

(3) Payment of any benefit provided under the Judges Retirement Act may not be deferred later than April 1 of the year following the year in which the judge has both attained at least age seventy and one-half years and terminated his or her employment as a judge.

(4) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the retirement system, whichever is later. An application may be filed no more than one hundred twenty days in advance of qualifying for retirement.

(5) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations

issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the Judges Retirement Act.

**Source:** Laws 1955, c. 83, § 8, p. 248; Laws 1957, c. 78, § 2, p. 317; Laws 1957, c. 79, § 3, p. 322; Laws 1965, c. 115, § 3, p. 444; Laws 1972, LB 1032, § 123; Laws 1973, LB 353, § 1; Laws 1984, LB 750, § 2; Laws 1986, LB 311, § 11; Laws 1987, LB 296, § 2; Laws 1989, LB 506, § 6; Laws 1994, LB 833, § 21; Laws 1997, LB 624, § 13; Laws 2003, LB 320, § 2; Laws 2003, LB 451, § 16; Laws 2004, LB 1097, § 14; Laws 2008, LB1147, § 5; Laws 2017, LB415, § 19.

**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.  
Operative date July 19, 2018.

#### **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.  
Operative date July 19, 2018.

**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 distribu-

tion, 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.

Operative date July 19, 2018.

#### **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.

Operative date July 19, 2018.

## ARTICLE 11

### COURT OF APPEALS

#### Section

24-1105. Cases pending on September 6, 1991; assignment to Court of Appeals.

24-1106. Jurisdiction; direct review by Supreme Court; when; removal of case.

#### **24-1105 Cases pending on September 6, 1991; assignment to Court of Appeals.**

Any case on appeal before the Supreme Court on September 6, 1991, except cases in which a sentence of death or life imprisonment has been imposed and cases involving the constitutionality of a statute, may be assigned to the Court of Appeals by the Supreme Court.

**Source:** Laws 1991, LB 732, § 5; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 24-1105 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**24-1106 Jurisdiction; direct review by Supreme Court; when; removal of case.**

(1) In cases which were appealable to the Supreme Court before September 6, 1991, the appeal, if taken, shall be to the Court of Appeals except in capital cases, cases in which life imprisonment has been imposed, and cases involving the constitutionality of a statute.

(2) Any party to a case appealed to the Court of Appeals may file a petition in the Supreme Court to bypass the review by the Court of Appeals and for direct review by the Supreme Court. The procedure and time for filing the petition shall be as provided by rules of the Supreme Court. In deciding whether to grant the petition, the Supreme Court may consider one or more of the following factors:

(a) Whether the case involves a question of first impression or presents a novel legal question;

(b) Whether the case involves a question of state or federal constitutional interpretation;

(c) Whether the case raises a question of law regarding the validity of a statute;

(d) Whether the case involves issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court;

(e) Whether the case is one of significant public interest; and

(f) Whether the case involves a question of qualified immunity in any civil action under 42 U.S.C. 1983, as the section existed on August 24, 2017.

When a petition for direct review is granted, the case shall be docketed for hearing before the Supreme Court.

(3) The Supreme Court shall by rule provide for the removal of a case from the Court of Appeals to the Supreme Court for decision by the Supreme Court at any time before a final decision has been made on the case by the Court of Appeals. The removal may be on the recommendation of the Court of Appeals or on motion of the Supreme Court. Cases may be removed from the Court of Appeals for decision by the Supreme Court for any one or more of the reasons set forth in subsection (2) of this section or in order to regulate the caseload existing in either the Court of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals and the Chief Justice of the Supreme Court shall regularly inform each other of the number and nature of cases docketed in the respective court.

**Source:** Laws 1991, LB 732, § 6; Laws 2015, LB268, § 3; Referendum 2016, No. 426; Laws 2017, LB204, § 1.

**Note:** The changes made to section 24-1106 by Laws 2015, LB 268, section 3, have been omitted because of the vote on the referendum at the November 2016 general election.

## CHAPTER 25

### COURTS; CIVIL PROCEDURE

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## ARTICLE 2

### COMMENCEMENT AND LIMITATION OF ACTIONS

Section

25-228. Action by victim of sexual assault of a child; when.

25-229. Action against real estate licensee; when.

#### **25-228 Action by victim of sexual assault of a child; when.**

(1) Notwithstanding any other provision of law:

(a) There shall not be any time limitation for an action against the individual or individuals directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 if such violation occurred (i) on or after August 24, 2017, or (ii) prior to August 24, 2017, if such action was not previously time barred; and

(b) An action against any person or entity other than the individual directly causing an injury or injuries suffered by a plaintiff when the plaintiff was a victim of a violation of section 28-319.01 or 28-320.01 may only be brought within twelve years after the plaintiff's twenty-first birthday.

(2) Criminal prosecution of a defendant under section 28-319.01 or 28-320.01 is not required to maintain a civil action for violation of such sections.

**Source:** Laws 2012, LB612, § 1; Laws 2017, LB300, § 1.

#### **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.  
Effective date July 19, 2018.

#### 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.

#### (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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**ARTICLE 5**

**COMMENCEMENT OF ACTIONS; PROCESS**

**(b) SERVICE AND RETURN OF SUMMONS**

Section

25-511. Service on employee of the state.

**(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.

#### (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.

Operative date July 19, 2018.

### 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.

Operative date July 19, 2018.

### 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.

Operative date July 19, 2018.

#### (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.

Operative date July 19, 2018.

### 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.

Operative date July 19, 2018.

## ARTICLE 11

## TRIAL

## (c) VERDICT

## Section

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.

## (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.  
Operative date July 19, 2018.

## (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.  
Operative date July 19, 2018.

## (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.  
Operative date July 19, 2018.

(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.

Operative date July 19, 2018.

**ARTICLE 12****EVIDENCE**

## (c) MEANS OF PRODUCING WITNESSES

## Section

- 25-1223. Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.
- 25-1224. Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.
- 25-1225. Repealed. Laws 2017, LB509, § 8.
- 25-1226. Subpoena; manner of service; time.
- 25-1228. Trial subpoena; witness fee; return; cost.
- 25-1236. Repealed. Laws 2017, LB509, § 8.

## (c) MEANS OF PRODUCING WITNESSES

**25-1223 Trial subpoena; deposition subpoena; issuance; statement required; by whom served; forms.**

(1) Upon the request of a party to a civil action or proceeding, a subpoena may be issued to command an individual to testify at a trial or deposition. The term trial in reference to a subpoena includes a hearing at which testimony may be taken.

(2) The clerk or a judge of the court in which the action or proceeding is pending shall issue a trial subpoena upon the request of a party. An attorney, as an officer of the court, may issue and sign a trial subpoena on behalf of the court if the attorney is authorized to practice in the court. An attorney who issues a subpoena must file a copy of the subpoena with the court on the day the subpoena is issued.

(3) A person before whom a deposition may be taken may issue a deposition subpoena on behalf of the court in which the action or proceeding is pending. An attorney, as an officer of the court, may issue and sign a deposition subpoena on behalf of the court if the attorney is authorized to practice in the court.

(4) A subpoena shall state the name of the court from which it is issued, the title of the action, and the case number and shall command each person to

whom it is directed to appear and testify at the time and place specified in the subpoena.

(5) A trial subpoena that is issued in a civil action or proceeding (a) at the request of an agency of state government or (b) pursuant to section 25-2304 shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also entitled to receive mileage at the rate that state employees receive. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the fees and mileage to which you are entitled.

(6) Any other trial subpoena in a civil action or proceeding shall contain the following statement: As a witness in [insert name of court], you are entitled to receive a witness fee in the amount of [insert amount from section 33-139] for each day that you are required to be in court and, if you live more than one mile from the courthouse, you are also eligible to receive mileage at the rate that state employees receive. You should have received your witness fee for one day with this subpoena. Ask the lawyer or party who subpoenaed you or the clerk of the court for information about what you should do to receive the additional fees, if any, and mileage to which you are entitled.

(7) The Supreme Court may promulgate forms for subpoenas for use in civil and criminal actions and proceedings. Any such forms shall not be in conflict with the laws governing such matters.

(8) A subpoena may be served by a sheriff or constable. It may also be served by a person who is twenty-one years of age or older and who is not a party to the action or proceeding.

**Source:** R.S.1867, Code § 350, p. 452; R.S.1913, § 7915; C.S.1922, § 8857; C.S.1929, § 20-1223; R.S.1943, § 25-1223; Laws 2017, LB509, § 1.

**25-1224 Subpoena; to whom directed; production of documents, information, or tangible things; Supreme Court; powers.**

(1) A subpoena commanding an individual to appear and testify at a trial or deposition may command that at the same time and place specified in the subpoena for the individual to appear and testify, the individual must produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. The scope of a command to produce documents, electronically stored information, or tangible things pursuant to this section is governed by the rules of discovery in civil cases.

(2) The Supreme Court may promulgate a rule for discovery in civil cases that specifies the procedures to be followed when a party seeks to serve a deposition subpoena that commands the individual to produce designated documents, electronically stored information, or tangible things in the individual's possession, custody, or control. Any such rule shall not conflict with the laws governing such matters.

**Source:** R.S.1867, Code § 351, p. 452; R.S.1913, § 7916; C.S.1922, § 8858; C.S.1929, § 20-1224; R.S.1943, § 25-1224; Laws 2017, LB509, § 2.

**25-1225 Repealed. Laws 2017, LB509, § 8.****25-1226 Subpoena; manner of service; time.**

(1) A subpoena for a trial or deposition may be served by personal service, which is made by leaving the subpoena with the individual to be served, or by certified mail service, which is made by sending the subpoena by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery. Service by certified mail is made on the date of delivery shown on the signed receipt.

(2) A subpoena for a trial must be served at least two days before the day on which the individual is commanded to appear and testify. A court may shorten the period for service for good cause shown. In determining whether good cause exists, a court may consider all relevant circumstances, including, but not limited to, the need for the testimony, the burden on the individual, and the reason why the individual was not subpoenaed earlier.

**Source:** R.S.1867, Code § 353, p. 452; R.S.1913, § 7918; Laws 1915, c. 148, § 2, p. 318; C.S.1922, § 8860; C.S.1929, § 20-1226; R.S. 1943, § 25-1226; Laws 1953, c. 69, § 1, p. 220; Laws 1957, c. 242, § 16, p. 830; Laws 2017, LB509, § 3.

**25-1228 Trial subpoena; witness fee; return; cost.**

(1) The witness fee for one day's attendance must be served with a trial subpoena except when the subpoena is issued (a) at the request of an agency of state government or (b) pursuant to section 25-2304.

(2) The person serving the subpoena shall make a return of service stating the name of the individual served, the date and method of service, and, if applicable, that the required witness fee was served with the subpoena. The return of service must be by affidavit unless the subpoena was served by a sheriff or constable. If service was made by certified mail, the signed receipt must be attached to the return of service.

(3) The cost of service of a subpoena is taxable as a court cost, and when service of a subpoena is made by a person other than a sheriff or constable, the cost taxable as a court cost is the lesser of the actual amount incurred for service of process or the statutory fee set for sheriffs in section 33-117.

(4) Except as provided in section 25-2304, the party at whose request a trial subpoena is issued in a civil action or proceeding must pay the witness the fees and mileage to which the witness is entitled under section 33-139. Any fees and mileage that were not paid to the witness before the witness testified must be paid to the witness within a reasonable time after the witness testified.

**Source:** R.S.1867, Code § 355, p. 453; R.S.1913, § 7920; C.S.1922, § 8862; C.S.1929, § 20-1228; R.S.1943, § 25-1228; Laws 1976, LB 750, § 1; Laws 2017, LB509, § 4.

**25-1236 Repealed. Laws 2017, LB509, § 8.**

**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. 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

- 25-1318. 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 an order 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.

Operative date July 19, 2018.

**Cross References**

For rate of interest on judgment, see section 45-103.

**25-1301.01 Final order; duty of clerk; exception.**

Within three working days after the entry of any final order, except judgments by default when service has been obtained by publication, the clerk of the court shall send the 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.  
Operative date July 19, 2018.

#### (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.  
Operative date July 19, 2018.

#### 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.  
Operative date July 19, 2018.

#### (e) MANNER OF ENTERING JUDGMENT

##### **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.

Operative date July 19, 2018.

**25-1319 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**25-1320 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**25-1321 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**25-1322 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

#### (h) SUMMARY JUDGMENTS

##### **25-1332 Motion for summary judgment; proceedings.**

(1) The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings and the evidence admitted at the hearing show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. The evidence that may be received on a motion for summary judgment includes depositions, answers to interrogatories, admissions, stipulations, and affidavits. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine dispute as to the amount of damages.

(2) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(a) Citing to particular parts of materials in the record, including depositions, answers to interrogatories, admissions, stipulations, affidavits, or other materials; or

(b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(3) If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by subsection (2) of this section, the court may:

(a) Give an opportunity to properly support or address the fact;

(b) Consider the fact undisputed for purposes of the motion;

(c) Grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to summary judgment; or

(d) Issue any other appropriate order.

**Source:** Laws 1951, c. 65, § 3, p. 199; Laws 2001, LB 489, § 3; Laws 2017, LB204, § 3.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Section

(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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

## (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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Operative date July 19, 2018.

(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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**ARTICLE 16****JURY**

## Section

25-1635. Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.

**25-1635 Jurors; disclosing names; when permissible; penalty; access to juror qualification forms.**

(1) It shall be unlawful for a jury commissioner or the officer in charge of the election records, or 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 herein provided, 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 from the revised key number list 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.  
Operative date July 19, 2018.

## 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.

Effective date July 19, 2018.

#### Cross References

For interest on unsettled accounts, see section 45-104.

## ARTICLE 19

### REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

#### (b) REVIEW ON APPEAL

Section

25-1912. Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.

#### (b) REVIEW ON APPEAL

**25-1912 Appeal; civil and criminal actions; procedure; notice of appeal; docketing fee; filing of transcript.**

(1) The proceedings to obtain a reversal, vacation, or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors, shall be by filing in the office of the clerk of the district court in which such judgment, decree, or final order was rendered, within thirty days after the entry of such judgment, decree, or final order, a notice of intention to prosecute such appeal signed by the appellant or appellants or his, her, or their attorney of record and, except as otherwise provided in sections 25-2301 to 25-2310 and 29-2306 and subsection (4) of section 48-638, by depositing with the clerk of the district court the docket fee required by section 33-103.

(2) A notice of appeal or docket fee filed or deposited after the announcement of a decision or final order but before the entry of the judgment, decree, or final order shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry.

(3) The running of the time for filing a notice of appeal shall be terminated as to all parties (a) by a timely motion for a new trial under section 25-1144.01, (b) by a timely motion to alter or amend a judgment under section 25-1329, or (c) by a timely motion to set aside the verdict or judgment under section 25-1315.02, and the full time for appeal fixed in subsection (1) of this section commences to run from the entry of the order ruling upon the motion filed pursuant to subdivision (a), (b), or (c) of this subsection. When any motion terminating the time for filing a notice of appeal is timely filed by any party, a notice of appeal filed before the court announces its decision upon the terminating motion shall have no effect, whether filed before or after the timely filing of the terminating motion. A new notice of appeal shall be filed within the prescribed time after the entry of the order ruling on the motion. No additional fees are required for such filing. A notice of appeal filed after the court announces its decision or order on the terminating motion but before the entry of the order is treated as filed on the date of and after the entry of the order.

(4) Except as otherwise provided in subsection (3) of this section, sections 25-2301 to 25-2310 and 29-2306, and subsection (4) of section 48-638, an appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal has been filed and such docket fee deposited in the office of the clerk of the district court. 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.

Operative date July 19, 2018.

Cross References

For amount of docket fee, see section 33-103.

## ARTICLE 21

## ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

## (e) FORECLOSURE OF MORTGAGES

## Section

25-2154. Satisfaction or payment; certificate; delivery to register of deeds; duties of clerk of district court; fee of register of deeds.

## (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.

## (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.

## (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.

## (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.  
Operative date July 19, 2018.

(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.  
Operative date July 19, 2018.

(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.

Operative date July 19, 2018.

## (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.

## 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.

#### (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.

Operative date July 19, 2018.

##### 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.

Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

#### **Cross References**

Records Management Act, see section 84-1220.

### **25-2210 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

**25-2211.01 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**25-2211.02 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

(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.

Operative date July 19, 2018.

## ARTICLE 25

### UNIFORM PROCEDURE FOR ACQUIRING PRIVATE PROPERTY FOR PUBLIC USE

Section

25-2501. Intent and purpose.

#### **25-2501 Intent and purpose.**

It is the intent and purpose of sections 25-2501 to 25-2506 to establish a uniform procedure to be used in acquiring private property for a public purpose by the State of Nebraska and its political subdivisions and by all privately owned public utility corporations and common carriers which have been granted the power of eminent domain. Such sections shall not apply to:

(1) Water transmission and distribution pipelines and their appurtenances and common carrier pipelines and their appurtenances;

(2) Public utilities and cities of all classes and villages when acquiring property for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts or when the acquisition is within the corporate limits of any city or village;

(3) Sanitary and improvement districts organized under sections 31-727 to 31-762 when acquiring easements for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts;

(4) Counties and municipalities which acquire property through the process of platting or subdivision or for street or highway construction or improvements;

(5) Common carriers subject to regulation by the Federal Railroad Administration of the United States Department of Transportation; or

(6) The Nebraska Department of Transportation when acquiring property for highway construction or improvements.

**Source:** Laws 1973, LB 187, § 1; Laws 1978, LB 917, § 1; Laws 1994, LB 441, § 2; Laws 2002, LB 176, § 1; Laws 2017, LB339, § 81.

## ARTICLE 26

### ARBITRATION

Section

25-2616. Repealed. Laws 2018, LB193, § 97.

**25-2616 Repealed. Laws 2018, LB193, § 97.**

Operative date July 19, 2018.

**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.

**(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.

**(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.  
Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

(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.  
Operative date July 19, 2018.

#### (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.  
Effective date July 19, 2018.

#### 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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

(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.

## 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.  
Operative date July 19, 2018.



## CHAPTER 28

### CRIMES AND PUNISHMENTS

#### Article.

1. Provisions Applicable to Offenses Generally.
  - (a) General Provisions. 28-101 to 28-105.01.
2. Inchoate Offenses. 28-201, 28-202.
3. Offenses against the Person.
  - (a) General Provisions. 28-303 to 28-322.
  - (b) Adult Protective Services Act. 28-358.01, 28-372.
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  - (s) Public Protection Act. 28-1354, 28-1356.

#### ARTICLE 1

#### PROVISIONS APPLICABLE TO OFFENSES GENERALLY

##### (a) GENERAL PROVISIONS

#### Section

- 28-101. Code, how cited.
- 28-104. Offense; crime; synonymous.
- 28-105. Felonies; classification of penalties; sentences; where served; eligibility for probation.
- 28-105.01. Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.

##### (a) GENERAL PROVISIONS

#### **28-101 Code, how cited.**

Sections 28-101 to 28-1357 and 28-1601 to 28-1603 shall be known and may be cited as the Nebraska Criminal Code.

**Source:** Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws

1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1; Laws 2016, LB136, § 1; Laws 2016, LB934, § 1; Laws 2016, LB1009, § 1; Laws 2016, LB1106, § 3; Laws 2017, LB289, § 2; Laws 2017, LB487, § 2; Laws 2018, LB931, § 1; Laws 2018, LB990, § 1.  
 Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB931, section 1, with LB990, section 1, to reflect all amendments.

**28-104 Offense; crime; synonymous.**

The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine, imprisonment, or death may be imposed.

**Source:** Laws 1977, LB 38, § 4; Laws 2015, LB268, § 5; Referendum 2016, No. 426.

**Note:** The changes made to section 28-104 by Laws 2015, LB 268, section 5, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.**

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into ten classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony .....	Death
Class IA felony .....	Life imprisonment
Class IB felony .....	Maximum—life imprisonment Minimum—twenty years imprisonment
Class IC felony .....	Maximum—fifty years imprisonment Mandatory minimum—five years imprisonment
Class ID felony .....	Maximum—fifty years imprisonment Mandatory minimum—three years imprisonment
Class II felony .....	Maximum—fifty years imprisonment Minimum—one year imprisonment
Class IIA felony .....	Maximum—twenty years imprisonment Minimum—none
Class III felony .....	Maximum—four years imprisonment and two years post-release

	supervision or twenty-five thousand dollars fine, or both
	Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IIIA felony . . . . .	Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both
	Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IV felony . . . . .	Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both
	Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed

(2) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 29-2266.02.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) Any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(8) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

**Source:** Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6; Laws 2016, LB1094, § 2; Referendum 2016, No. 426.

**Note:** The changes made to section 28-105 by Laws 2015, LB 268, section 6, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-105.01 Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.**

(1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with an intellectual disability.

(3) As used in subsection (2) of this section, intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of intellectual disability.

(4) If (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

**Source:** Laws 1982, LB 787, § 23; Laws 1998, LB 1266, § 2; Laws 2002, Third Spec. Sess., LB 1, § 2; Laws 2013, LB23, § 3; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 28-105.01 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

## ARTICLE 2

### INCHOATE OFFENSES

#### Section

28-201. Criminal attempt; conduct; penalties.

28-202. Conspiracy, defined; penalty.

#### **28-201 Criminal attempt; conduct; penalties.**

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;

(b) A Class IIA felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is a Class IIA felony;

(d) A Class IV felony when the crime attempted is a Class III or IIIA felony;

(e) A Class I misdemeanor when the crime attempted is a Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

**Source:** Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2; Laws 2012, LB799, § 1; Laws 2015, LB268, § 7; Laws 2015, LB605, § 8; Referendum 2016, No. 426.

**Note:** The changes made to section 28-201 by Laws 2015, LB 268, section 7, have been omitted because of the vote on the referendum at the November 2016 general election.

### **28-202 Conspiracy, defined; penalty.**

(1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony:

(a) He agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and

(b) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit such crime with such other person or persons whether or not he knows their identity.

(3) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II felony.

A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

**Source:** Laws 1977, LB 38, § 11; Laws 2015, LB268, § 8; Referendum 2016, No. 426.

**Note:** The changes made to section 28-202 by Laws 2015, LB 268, section 8, have been omitted because of the vote on the referendum at the November 2016 general election.

**ARTICLE 3**

**OFFENSES AGAINST THE PERSON**

(a) GENERAL PROVISIONS

Section

- 28-303. Murder in the first degree; penalty.
- 28-311.04. Stalking; violations; penalties.
- 28-311.11. Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.
- 28-311.12. Foreign sexual assault protection order; enforcement.
- 28-322. Sexual abuse of an inmate or parolee; terms, defined.

(b) ADULT PROTECTIVE SERVICES ACT

- 28-358.01. Isolation, defined.
- 28-372. Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established.

(a) GENERAL PROVISIONS

**28-303 Murder in the first degree; penalty.**

A person commits murder in the first degree if he or she kills another person (1) purposely and with deliberate and premeditated malice, or (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (3) by administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he or she purposely procures the conviction and execution of any innocent person. The determination of whether murder in the first degree shall be punished as a Class I or Class IA felony shall be made pursuant to sections 29-2519 to 29-2524.

**Source:** Laws 1977, LB 38, § 18; Laws 2002, Third Spec. Sess., LB 1, § 3; Laws 2015, LB268, § 9; Referendum 2016, No. 426.

**Note:** The changes made to section 28-303 by Laws 2015, LB 268, section 9, have been omitted because of the vote on the referendum at the November 2016 general election.

**28-311.04 Stalking; violations; penalties.**

(1) Except as provided in subsection (2) of this section, any person convicted of violating section 28-311.03 is guilty of a Class I misdemeanor.

(2) Any person convicted of violating section 28-311.03 is guilty of a Class IIIA felony if:

- (a) The person has a prior conviction under such section or a substantially conforming criminal violation within the last seven years;
- (b) The victim is under sixteen years of age;
- (c) The person possessed a deadly weapon at any time during the violation;

(d) The person was also in violation of section 28-311.09, 28-311.11, 42-924, or 42-925, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 at any time during the violation; or

(e) The person has been convicted of any felony in this state or has been convicted of a crime in another jurisdiction which, if committed in this state, would constitute a felony and the victim or a family or household member of the victim was also the victim of such previous felony.

**Source:** Laws 1992, LB 1098, § 3; Laws 1993, LB 299, § 3; Laws 2006, LB 1113, § 23; Laws 2015, LB605, § 16; Laws 2017, LB289, § 3.

**28-311.11 Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.**

(1) Any victim of a sexual assault offense may file a petition and affidavit for a sexual assault protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a sexual assault protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner.

(2) The petition for a sexual assault protection order shall state the events and dates of acts constituting the sexual assault offense.

(3) A petition for a sexual assault protection order shall be filed with the clerk of the district court and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a sexual assault protection order may not be withdrawn except upon order of the court. A sexual assault protection order shall specify that it is effective for a period of one year unless renewed pursuant to subsection (11) of this section or otherwise dismissed or modified by the court. Any person who knowingly violates a sexual assault protection order after service or notice as described in subdivision (8)(b) of this section shall be guilty of a Class I misdemeanor except that for any second violation of a sexual assault protection order within a twelve-month period, or any third or subsequent violation, whenever committed, such person shall be guilty of a Class IV felony.

(5)(a) Fees to cover costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the sexual assault protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for issuance and renewal of a sexual assault protection order with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary and final sexual assault protection order forms and provide a copy of such forms to all clerks of the district courts in this state. Such standard temporary and final sexual assault protection order forms shall be the only forms used in this state.

(7) A sexual assault protection order may be issued or renewed ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued or renewed, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. If such ex parte order is issued or renewed without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date.

(8)(a) Upon the issuance or renewal of any sexual assault protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the sexual assault protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the sexual assault protection order upon the respondent and file its return thereon with the clerk of the court which issued the sexual assault protection order within fourteen days of the issuance of the initial or renewed sexual assault protection order. If any sexual assault protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the sexual assault protection order is not dismissed, such respondent shall



be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be deemed to be granted and remain in effect and the service of the ex parte order will serve as notice required under this section.

(9) A peace officer shall, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a sexual assault protection order issued pursuant to this section or a violation of a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 and (b) a petitioner under this section provides the peace officer with a copy of such order or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

(10) A peace officer making an arrest pursuant to subsection (9) of this section shall take such person into custody and take such person before the county court or the court which issued the sexual assault protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the sexual assault offense.

(11) An order issued under subsection (1) of this section may be renewed annually. To request renewal of the order, the petitioner shall file a petition for renewal and affidavit in support thereof at least forty-five days prior to the date the order is set to expire. The petition for renewal shall state the reasons a renewal is sought and shall be filed with the clerk of the district court, and the proceeding thereon may be heard by the county court or the district court as provided in section 25-2740. A petition for renewal will otherwise be governed in accordance with the procedures set forth in subsections (4) through (10) of this section.

(12) For purposes of this section, sexual assault offense means:

(a) Conduct amounting to sexual assault under section 28-319 or 28-320 or sexual assault of a child under section 28-319.01 or 28-320.01 or an attempt to commit any of such offenses; or

(b) Subjecting or attempting to subject another person to sexual contact or sexual penetration without his or her consent, as such terms are defined in section 28-318.

**Source:** Laws 2017, LB289, § 4.

### **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.

### **28-322 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.  
Effective date July 19, 2018.

## **(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 communi-

cated 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.

## ARTICLE 4

### DRUGS AND NARCOTICS

#### Section

- 28-401. Terms, defined.
- 28-401.01. Act, how cited.
- 28-405. Controlled substances; schedules; enumerated.
- 28-410. Records of registrants; inventory; violation; penalty; storage.
- 28-411. Controlled substances; records; by whom kept; contents; compound controlled substances; duties.
- 28-414. Controlled substance; Schedule II; prescription; contents.
- 28-414.01. Controlled substance; Schedule III, IV, or V; prescription; contents.
- 28-414.03. Controlled substances; maintenance of records; label.
- 28-416. Prohibited acts; violations; penalties.
- 28-441. Drug paraphernalia; use or possession; unlawful; penalty.
- 28-442. Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.
- 28-470. Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.
- 28-472. Drug overdose; exception from criminal liability; conditions.
- 28-473. Schedule II controlled substance or other opiate; practitioner; duties.
- 28-474. Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.
- 28-475. Opiates; receipt; identification required.

#### **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, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness

thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration or obtained pursuant to sections 28-463 to 28-468. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(14) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the

preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(17) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(19) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(20) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State means the State of Nebraska;

(24) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital has the same meaning as in section 71-419;

(26) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis means (a) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols. When resins extracted from industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(28) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if

any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(35) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(36) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature has the definition found in section 86-621;

(40) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(41) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(42) Compounding has the same meaning as in section 38-2811;

(43) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body; and

(44) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or



another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.

**Source:** Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3; Laws 2018, LB1034, § 1. Effective date July 19, 2018.

#### Cross References

Health Care Facility Licensure Act, see section 71-401.

### 28-401.01 Act, how cited.

Sections 28-401 to 28-456.01 and 28-458 to 28-475 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.  
Effective date July 19, 2018.

### **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) Levophenacetylmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Proheptazine;
- (40) Properidine;
- (41) Propiram;
- (42) Racemoramide;
- (43) Trimeperidine;
- (44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
- (45) Tilidine;
- (46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;
- (48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;
- (49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
- (50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
- (53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;
- (54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
- (55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers;

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers; and

(58) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine, except hydrochloride salt;
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine; and
- (23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-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; TPCP; and TCP;

(16) Hashish or concentrated cannabis;

(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) *Salvia divinorum* or Salvinorin A. *Salvia divinorum* or Salvinorin A includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus *cannabis* (*cannabis* plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(D) 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 tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-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;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl 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, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl 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, aminooxoalkyl, 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-methylenedioxypropylamphetamine, 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) Naphthylpropylamphetamine, 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, alkylendioxy, 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 Oxylate; and Sodium Oxylbutyrate.

(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 norephedrine;
- (5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)propylamine; alpha-(methylamino)propylamine; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropylamine; methylcathinone; monomethylpropion; ephedrine; 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) Lisdexamphetamine, 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 flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(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-hydroxyandrostando[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]-androst-3-one);

(56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);

(57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androst-3-one);

(58) Prostanazol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);

(59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);

(60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);

(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrost-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: Lorcaseerin.

(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.  
Effective date July 19, 2018.

#### **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; prescription; contents.**

(1) Except as otherwise provided in this section or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written, oral, or electronic medical order. Such medical order is valid for six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(4) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

**Source:** Laws 2014, LB811, § 7; Laws 2017, LB166, § 4.

**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.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB923, section 1, with LB1034, section 2, to reflect all amendments.

#### 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 Schedule II controlled substance or other opiate; practitioner; duties.**

(1) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain and again prior to the practitioner's third prescription for such course of treatment, a 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:

(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.

(2) This section terminates on January 1, 2029.

**Source:** Laws 2018, LB931, § 3.

Effective date July 19, 2018.

**28-474 Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.**

(1) 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.

(2) A practitioner who is prescribing an opiate 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 (3) 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.

(3) 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.

(4) This section does not apply to controlled substances prescribed pursuant to section 28-412.

(5) This section terminates on January 1, 2029.

**Source:** Laws 2018, LB931, § 4.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**ARTICLE 6  
OFFENSES INVOLVING FRAUD**

Section

- 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.

**28-612 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**ARTICLE 7**

**OFFENSES INVOLVING THE FAMILY RELATION**

Section

- 28-712. Alternative response implementation plan; contents; department; use; report; rules and regulations.
- 28-712.01. Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General’s review.
- 28-718. Child protection cases; central registry; name-change order; treatment; fee; waiver.

**28-712 Alternative response implementation plan; contents; department; use; report; rules and regulations.**

(1) The department, in consultation with the Nebraska Children’s Commission, shall develop an alternative response implementation plan in accordance with this section and sections 28-710.01 and 28-712.01. The alternative response implementation plan shall include the provision of concrete supports and voluntary services, including, but not limited to: Meeting basic needs, including food and clothing assistance; housing assistance; transportation assistance; child care assistance; and mental health and substance abuse services. When the alternative response implementation plan has been developed, the department may begin using alternative response in up to five alternative response demonstration project locations that are designated by the department. The department may begin using alternative response statewide on and after April 28, 2017. The department shall provide a report to the commission and the Health and Human Services Committee of the Legislature by November 15, 2018. The report shall outline, at a minimum, the challenges, barriers, and opportunities that may occur if the alternative response implementation

plan is made permanent. The department shall continue using alternative response until December 31, 2020. Continued use of alternative response thereafter shall require approval of the Legislature. For purposes of this section, demonstration project location means any geographic region, including, but not limited to, a city, a township, a village, a county, a group of counties, or a group of counties and cities, townships, or villages.

(2) The department shall provide to the Nebraska Children's Commission regular updates on:

(a) The status of alternative response;

(b) Inclusion of child welfare stakeholders, service providers, and other community partners, including families, for feedback and recommendations on alternative response;

(c) Any findings or recommendations made by the independent evaluator, including costs; and

(d) Any alternative response programmatic modifications, including, but not limited to, proposed changes in rules and regulations.

(3) The department shall adopt and promulgate rules and regulations to carry out this section and sections 28-710.01 and 28-712.01. Such rules and regulations shall include, but not be limited to, provisions on the transfer of cases from alternative response to traditional response; notice to families subject to a comprehensive assessment and served through alternative response of the alternative response process and their rights, including the opportunity to challenge agency determinations; the provision of services through alternative response; the collection, sharing, and reporting of data; and the alternative response ineligibility criteria.

**Source:** Laws 2014, LB853, § 3; Laws 2017, LB225, § 1.

**28-712.01 Alternative response demonstration projects; Review, Evaluate, and Decide Team; duties; department; duties; Inspector General's review.**

(1) This section applies to alternative response demonstration projects designated under section 28-712.

(2) The Review, Evaluate, and Decide Team shall convene to review intakes pursuant to the department's rules, regulations, and policies, to evaluate the information, and to determine assignment for alternative response or traditional response. The team shall utilize consistent criteria to review the severity of the allegation of child abuse or neglect, access to the perpetrator, vulnerability of the child, family history including previous reports, parental cooperation, parental or caretaker protective factors, and other information as deemed necessary. At the conclusion of the review, the intake shall be assigned to either traditional response or alternative response. Decisions of the team shall be made by consensus. If the team cannot come to consensus, the intake shall be assigned for a traditional response.

(3) In the case of an alternative response, the department shall complete a comprehensive assessment. The department shall transfer the case being given alternative response to traditional response if the department determines that a child is unsafe. Upon completion of the comprehensive assessment, if it is determined that the child is safe, participation in services offered to the family receiving an alternative response is voluntary, the case shall not be transferred to traditional response based upon the family's failure to enroll or participate in

such services, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718.

(4) The department shall, by the next working day after receipt of a report of child abuse and neglect, enter into the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect received under this section that are opened for alternative response and any action taken.

(5) The department shall make available to the appropriate investigating law enforcement agency, child advocacy center, and county attorney a copy of all reports relative to a case of suspected child abuse or neglect. Aggregate, nonidentifying reports of child abuse or neglect receiving an alternative response shall be made available quarterly to requesting agencies outside the department. Such alternative response data shall include, but not be limited to, the nature of the initial child abuse or neglect report, the age of the child or children, the nature of services offered, the location of the cases, the number of cases per month, and the number of alternative response cases that were transferred to traditional response. No other agency or individual except the office of Inspector General of Nebraska Child Welfare, the Public Counsel, law enforcement agency personnel, child advocacy center employees, and county attorneys shall be provided specific, identifying reports of child abuse or neglect being given alternative response. The office of Inspector General of Nebraska Child Welfare shall have access to all reports relative to cases of suspected child abuse or neglect subject to traditional response and those subject to alternative response. The department and the office shall develop procedures allowing for the Inspector General's review of cases subject to alternative response. The Inspector General shall include in the report pursuant to section 43-4331 a summary of all cases reviewed pursuant to this subsection.

**Source:** Laws 2014, LB853, § 4; Laws 2017, LB225, § 2.

**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.

## ARTICLE 8

### OFFENSES RELATING TO MORALS

#### Section

28-802. Pandering; penalty.

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.

#### **28-814 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.

Operative date July 19, 2018.

### **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.
- 28-915. Perjury; subornation of perjury; penalty.
- 28-915.01. False statement under oath or affirmation; penalty; applicability of section.
- 28-929.02. Assault on a health care professional; hospital and health clinic; sign required.
- 28-934. Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence.

**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.  
Effective date July 19, 2018.

### **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.

### **28-929.02 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.  
Effective date July 19, 2018.

### **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 out-of-hospital 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.  
Effective date July 19, 2018.

#### Cross References

Sex Offender Commitment Act, see section 71-1201.

## 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.

#### **28-1201 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.

Effective date July 19, 2018.

**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 auticycle, 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.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB321, section 1, with LB909, section 1, to reflect all amendments.

**Note:** Changes made by LB909 became effective April 12, 2018. Changes made by LB321 became effective July 19, 2018.

#### 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.  
Effective date July 19, 2018.

**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; or

(iii) Is the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or

(b) Possesses a firearm or brass or iron knuckles and he or she has been convicted within the past seven years of a misdemeanor crime of domestic violence.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4) Subdivision (1)(a)(i) of this section shall not prohibit:

(a) Possession of archery equipment for lawful purposes; or

(b) If in possession of a recreational license, possession of a knife for purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs.

(5)(a) For purposes of this section, misdemeanor crime of domestic violence means a crime that:

(i) Is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(ii) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(iii) Is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(b) For purposes of this section, misdemeanor crime of domestic violence also includes the following offenses, if committed by a person against his or her spouse, his or her former spouse, a person with whom he or she is or was involved in a dating relationship as defined in section 28-323, or a person with whom he or she has a child in common whether or not they have been married or lived together at any time:

(i) Assault in the third degree under section 28-310;

(ii) Stalking under subsection (1) of section 28-311.04;

(iii) False imprisonment in the second degree under section 28-315;

(iv) First offense domestic assault in the third degree under subsection (1) of section 28-323; or

(v) Any attempt or conspiracy to commit any of such offenses.

(c) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(i) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(ii) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(A) The case was tried to a jury; or

(B) The person knowingly and intelligently waived the right to have the case tried to a jury.

(6) In addition, for purposes of this section:

(a) Archery equipment means:

(i) A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and

(ii) Target or hunting arrows, including arrows with broad, fixed, or removable heads or that contain multiple sharp cutting edges;

(b) Domestic violence protection order means a protection order issued pursuant to section 42-924;

(c) Harassment protection order means a protection order issued pursuant to section 28-311.09 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe;

(d) Recreational license means a state-issued license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska; and

(e) Sexual assault protection order means a protection order issued pursuant to section 28-311.11 or that meets or exceeds the criteria set forth in section 28-311.12 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

**Source:** Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10; Laws 2017, LB289, § 10; Laws 2017, LB478, § 1; Laws 2018, LB848, § 1.

Effective date July 19, 2018.

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 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.

Effective date July 19, 2018.

(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.

Effective date July 19, 2018.

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 profes-

sional 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.  
Effective date July 19, 2018.

**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.



## CHAPTER 29

### CRIMINAL PROCEDURE

#### Article.

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#### ARTICLE 1

#### DEFINITIONS AND GENERAL RULES OF PROCEDURE

#### Section

29-119. Plea agreement; terms, defined.

#### **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.

**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.

Effective date July 19, 2018.

## 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; conditions; pretrial release program; conditions.

29-901.01. Conditions of release; how determined.

### **29-901 Bail; personal recognizance; conditions; pretrial release program; conditions.**

(1) Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in

the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If the judge determines that the defendant shall not be released on his or her personal recognizance, the judge shall consider the defendant's financial ability to pay a bond and shall impose the least onerous of the following conditions that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or the public at large:

(a) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(b) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release; or

(c) Require, at the option of any bailable defendant, either of the following:

(i) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(ii) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

(2) If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the



recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety.

(3) In order to assure compliance with the conditions of release referred to in subsection (1) of this section, the court may order a defendant to be supervised by a person, an organization, or a pretrial services program approved by the county board. A court shall waive any fees or costs associated with the conditions of release or supervision if the court finds the defendant is unable to pay for such costs. Eligibility for release or supervision by such pretrial release program shall under no circumstances be conditioned upon the defendant's ability to pay. While under supervision of an approved entity, and in addition to the conditions of release referred to in subsection (1) of this section, the court may impose the following conditions:

(a) Periodic telephone contact by the defendant with the organization or pretrial services program;

(b) Periodic office visits by the defendant to the organization or pretrial services program;

(c) Periodic visits to the defendant's home by the organization or pretrial services program;

(d) Mental health or substance abuse treatment for the defendant, including residential treatment, if the defendant consents or agrees to the treatment;

(e) Periodic alcohol or drug testing of the defendant;

(f) Domestic violence counseling for the defendant, if the defendant consents or agrees to the counseling;

(g) Electronic or global-positioning monitoring of the defendant; and

(h) Any other supervision techniques shown by research to increase court appearance and public safety rates for defendants released on bond.

(4) The incriminating results of any drug or alcohol test or any information learned by a representative of an organization or program shall not be admissible in any proceeding, except for a proceeding relating to revocation or amendment of conditions of bond release.

**Source:** G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15; Laws 2017, LB259, § 2.

#### 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 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.  
Operative date July 19, 2018.

**ARTICLE 14****GRAND JURY**

## Section

29-1407.01. Grand jury proceedings; reporter; duties; transcript; statements; availability.

29-1414. Disclosure of indictment; when prohibited.

29-1418. Indictments; presentation; filing; finding of probable cause; dismissal; motions.

**29-1407.01 Grand jury proceedings; reporter; duties; transcript; 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.

(2)(a) Except as provided in subdivision (2)(b) of this section, 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. No release or destruction of the notes or transcripts shall occur without prior court approval.

(b) In the case of a grand jury impaneled pursuant to subsection (4) of section 29-1401, a transcript, including any exhibits of the grand jury proceedings, shall be prepared at court expense and shall be filed with the court where it shall be available for public review. Such transcript shall not include the names of grand jurors or their deliberations.

(3) 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.

(4) 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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

## ARTICLE 16

### PROSECUTION ON INFORMATION

#### Section

29-1602. Information; by whom filed and subscribed; names of witnesses; endorsement.

29-1603. Allegations; how made; joinder of offenses; rights of defendant.

#### **29-1602 Information; by whom filed and subscribed; names of witnesses; endorsement.**

All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. The prosecuting attorney shall subscribe his or her name thereto and endorse thereon the names of the witnesses known to him or her at the time of filing. After the information has been filed, the prosecuting attorney shall endorse on the information the names of such other witnesses as shall then be known to him or her as the court in its discretion may prescribe, except that if a notice of aggravation is contained in the information as provided in section 29-1603, the prosecuting attorney may endorse additional witnesses at any time up to and including the thirtieth day prior to the trial of guilt.

**Source:** Laws 1885, c. 108, § 2, p. 397; R.S.1913, § 9063; Laws 1915, c. 164, § 1, p. 335; C.S.1922, § 10087; C.S.1929, § 29-1602; R.S. 1943, § 29-1602; Laws 2002, Third Spec. Sess., LB 1, § 4; Laws 2015, LB268, § 11; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1602 by Laws 2015, LB 268, section 11, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **29-1603 Allegations; how made; joinder of offenses; rights of defendant.**

(1) All informations shall be in writing and signed by the county attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases.

(2)(a) Any information charging a violation of section 28-303 and in which the death penalty is sought shall contain a notice of aggravation which alleges one or more aggravating circumstances, as such aggravating circumstances are provided in section 29-2523. The notice of aggravation shall be filed as provided in section 29-1602. It shall constitute sufficient notice to describe the alleged aggravating circumstances in the language provided in section 29-2523.

(b) The state shall be permitted to add to or amend a notice of aggravation at any time up to and including the thirtieth day prior to the trial of guilt.

(c) The existence or contents of a notice of aggravation shall not be disclosed to the jury until after the verdict is rendered in the trial of guilt.

(3) Different offenses and different degrees of the same offense may be joined in one information, in all cases in which the same might by different counts be joined in one indictment; and in all cases a defendant or defendants shall have the same right, as to proceedings therein, as the defendant or defendants would have if prosecuted for the same offense upon indictment.

**Source:** Laws 1885, c. 108, § 3, p. 397; R.S.1913, § 9064; C.S.1922, § 10088; C.S.1929, § 29-1603; R.S.1943, § 29-1603; Laws 2002, Third Spec. Sess., LB 1, § 5; Laws 2011, LB669, § 22; Laws 2015, LB268, § 12; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1603 by Laws 2015, LB 268, section 12, have been omitted because of the vote on the referendum at the November 2016 general election.

## ARTICLE 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.

Operative date July 19, 2018.

## 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; capital punishment; stay of execution.

29-1823. Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.

#### **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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**29-1822 Mental incompetency of accused after crime commission; effect; capital punishment; stay of execution.**

A person who becomes mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the incompetency. If, after the verdict of guilty and before judgment pronounced, such person becomes mentally incompetent, then no judgment shall be given while such incompetency shall continue; and if, after judgment and before execution of the sentence, such person shall become mentally incompetent, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the incompetency.

**Source:** G.S.1873, c. 58, § 454, p. 823; R.S.1913, § 9098; C.S.1922, § 10123; C.S.1929, § 29-1821; R.S.1943, § 29-1822; Laws 1986, LB 1177, § 7; Laws 2015, LB268, § 13; Referendum 2016, No. 426.

**Note:** The changes made to section 29-1822 by Laws 2015, LB 268, section 13, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-1823 Mental incompetency of accused before trial; determination by judge; effect; costs; hearing; commitment proceeding.**

(1) If at any time prior to trial it appears that the accused has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the accused, or by any person for the accused. The judge of the district or county court of the county where the accused is to be tried shall have the authority to determine whether or not the accused is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the accused to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the accused is mentally incompetent to stand trial and that there is a substantial probability that the accused will become competent within the foreseeable future, the judge shall order the accused to be committed to a state hospital for the mentally ill or some other appropriate state-owned or state-operated facility for appropriate treatment until such time as the disability may be removed.

(2) Within six months after the commencement of the treatment ordered by the district or county court, and every six months thereafter until either the disability is removed or other disposition of the accused has been made, the court shall hold a hearing to determine (a) whether the accused is competent to stand trial or (b) whether or not there is a substantial probability that the accused will become competent within the foreseeable future.



(3) If it is determined that there is not a substantial probability that the accused will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the accused. If during the period of time between the six-month review hearings set forth in subsection (2) of this section it is the opinion of the Department of Health and Human Services that the accused is competent to stand trial, the department shall file a report outlining its opinion with the court, and within twenty-one days after such report being filed, the court shall hold a hearing to determine whether or not the accused is competent to stand trial. The state shall pay the cost of maintenance and care of the accused during the period of time ordered by the court for treatment to remove the disability.

**Source:** Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4.

**Cross References**

**Attendance of witnesses, right of accused to compel, see Article I, section 11, Constitution of Nebraska.**

**ARTICLE 19**

**PREPARATION FOR TRIAL**

(a) TESTIMONY IN GENERAL

Section

29-1901. Subpoenas in traffic and criminal cases; provisions applicable.

29-1903. Traffic, criminal, and juvenile cases; witness fees and mileage.

(a) TESTIMONY IN GENERAL

**29-1901 Subpoenas in traffic and criminal cases; provisions applicable.**

(1) The statutes governing subpoenas in civil actions and proceedings shall also govern subpoenas in traffic and criminal cases, except that subsections (1), (3), and (4) of section 25-1228 shall not apply to those cases. The payment of compensation and mileage to witnesses in those cases shall be governed by section 29-1903.

(2) A trial subpoena in a traffic and criminal case shall contain the statement specified in subsection (5) of section 25-1223.

**Source:** G.S.1873, c. 58, § 459, p. 824; R.S.1913, § 9099; C.S.1922, § 10124; C.S.1929, § 29-1901; R.S.1943, § 29-1901; Laws 1990, LB 87, § 3; Laws 1992, LB 435, § 1; Laws 1992, LB 1059, § 23; Laws 2017, LB509, § 5.

**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.

## ARTICLE 20

### TRIAL

#### Section

- 29-2001. Trial; presence of accused required; exceptions.
- 29-2004. Jury; how drawn and selected; alternate jurors.
- 29-2005. Peremptory challenges.
- 29-2006. Challenges for cause.
- 29-2020. Bill of exceptions by defendant; request; procedure; exception in capital cases.
- 29-2023. 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.  
Operative date July 19, 2018.

#### **29-2004 Jury; how drawn and selected; alternate jurors.**

(1) All parties may stipulate that the jury may be selected up to thirty-one days prior to the date of trial. The stipulation must be unanimous among all parties and evidenced by a joint stipulation to the county court.

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of one or two additional jurors, to be known as alternate jurors. Such jurors shall be drawn from the same source and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall

also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If an information charging a violation of section 28-303 and in which the death penalty is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520. If, before the final submission of the cause a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his or her place in the jury box. If there are two alternate jurors the court shall select one by lot, who shall then take his or her place in the jury box. After an alternate juror is in the jury box he or she shall be subject to the same rules as a regular juror.

**Source:** G.S.1873, c. 58, § 466, p. 825; R.S.1913, § 9107; C.S.1922, § 10132; C.S.1929, § 29-2004; Laws 1933, c. 38, § 1, p. 242; C.S.Supp.,1941, § 29-2004; R.S.1943, § 29-2004; Laws 1996, LB 1249, § 2; Laws 2002, Third Spec. Sess., LB 1, § 6; Laws 2015, LB268, § 14; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2004 by Laws 2015, LB 268, section 14, have been omitted because of the vote on the referendum at the November 2016 general election.

#### Cross References

**Change of venue**, criminal case pending in county with population of four thousand or less without adequate facilities for jury trials, see section 25-412.01.

**For drawing and selecting of jurors**, see Chapter 25, article 16.

### 29-2005 Peremptory challenges.

Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more; every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of twelve jurors in all cases when the offense is punishable with death or imprisonment for life, six jurors when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases; *Provided*, that in all cases where alternate jurors are called, as provided in section 29-2004, then in that case both the defendant and the attorney prosecuting for the state shall each be allowed one added peremptory challenge to each alternate juror.

**Source:** G.S.1873, c. 58, § 467, p. 826; R.S.1913, § 9108; Laws 1915, c. 166, § 1, p. 337; C.S.1922, § 10133; C.S.1929, § 29-2005; Laws 1933, c. 38, § 2, p. 243; C.S.Supp.,1941, § 29-2005; R.S.1943, § 29-2005; Laws 1981, LB 213, § 1; Laws 2015, LB268, § 15; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2005 by Laws 2015, LB 268, section 15, have been omitted because of the vote on the referendum at the November 2016 general election.

### 29-2006 Challenges for cause.

The following shall be good causes for challenge to any person called as a juror or alternate juror, on the trial of any indictment: (1) That he was a member of the grand jury which found the indictment; (2) that he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, if a juror or alternate juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to

examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror shall say on oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case; (3) in indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death; (4) that he is a relation within the fifth degree to the person alleged to be injured or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant; (5) that he has served on the petit jury which was sworn in the same cause against the same defendant and which jury either rendered a verdict which was set aside or was discharged, after hearing the evidence; (6) that he has served as a juror in a civil case brought against the defendant for the same act; (7) that he has been in good faith subpoenaed as a witness in the case; (8) that he is a habitual drunkard; (9) the same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

**Source:** G.S.1873, c. 58, § 468, p. 826; R.S.1913, § 9109; C.S.1922, § 10134; C.S.1929, § 29-2006; Laws 1933, c. 38, § 3, p. 243; C.S.Supp.,1941, § 29-2006; R.S.1943, § 29-2006; Laws 2015, LB268, § 16; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2006 by Laws 2015, LB 268, section 16, have been omitted because of the vote on the referendum at the November 2016 general election.

### **29-2020 Bill of exceptions by defendant; request; procedure; exception in capital cases.**

Except as provided in section 29-2525 for cases when the punishment is capital, in all criminal cases when a defendant feels aggrieved by any opinion or decision of the court, he or she may order a bill of exceptions. The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules established in such matters in civil cases.

**Source:** G.S.1873, c. 58, § 482, p. 829; R.S.1913, § 9123; C.S.1922, § 10148; C.S.1929, § 29-2020; R.S.1943, § 29-2020; Laws 1959, c. 120, § 1, p. 452; Laws 1961, c. 135, § 2, p. 390; Laws 1990, LB 829, § 1; Laws 2015, LB268, § 17; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2020 by Laws 2015, LB 268, section 17, have been omitted because of the vote on the referendum at the November 2016 general election.

#### **Cross References**

**Error proceedings by county attorney, decision on appeal, see section 29-2316.**

### **29-2023 Jury; discharged before verdict; effect; record.**

In case a jury shall be 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 shall 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.

Operative date July 19, 2018.

**29-2027 Verdict in trials for murder; conviction by confession; sentencing procedure.**

In all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it is murder in the first or second degree or manslaughter; and if such person is convicted by confession in open court, the court shall proceed by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly or as provided in sections 29-2519 to 29-2524 for murder in the first degree.

**Source:** G.S.1873, c. 58, § 489, p. 830; R.S.1913, § 9130; C.S.1922, § 10155; C.S.1929, § 29-2027; R.S.1943, § 29-2027; Laws 2002, Third Spec. Sess., LB 1, § 7; Laws 2015, LB268, § 18; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2027 by Laws 2015, LB 268, section 18, have been omitted because of the vote on the referendum at the November 2016 general election.

## ARTICLE 22

### JUDGMENT ON CONVICTION

#### (a) JUDGMENT ON CONVICTION

##### Section

- 29-2204. Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.
- 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

- 29-2252. Probation administrator; duties.
- 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.
- 29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.

#### (d) COMMUNITY SERVICE

- 29-2277. Terms, defined.
- 29-2278. Community service; sentencing; when; failure to perform; effect; exception to eligibility.
- 29-2279. Community service; length.

#### (a) JUDGMENT ON CONVICTION

**29-2204 Sentence for felony other than Class III, IIIA, or IV felony; court; duties; study of offender; when; defendant under eighteen years of age; disposition.**

(1) Except when a term of life imprisonment is required by law, in imposing a sentence upon an offender for any class of felony other than a Class III, IIIA, or IV felony, the court shall fix the minimum and the maximum terms of the sentence to be served within the limits provided by law. The maximum term shall not be greater than the maximum limit provided by law, and:

(a) The minimum term fixed by the court shall be any term of years less than the maximum term imposed by the court; or

(b) The minimum term shall be the minimum limit provided by law.

(2) When a maximum term of life is imposed by the court for a Class IB felony, the minimum term fixed by the court shall be:

(a) Any term of years not less than the minimum limit provided by law; or

(b) A term of life imprisonment.

(3) When a maximum term of life is imposed by the court for a Class IA felony, the minimum term fixed by the court shall be:

(a) A term of life imprisonment; or

(b) Any term of years not less than the minimum limit provided by law after consideration of the mitigating factors in section 28-105.02, if the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted.

(4) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court may commit an offender to the Department of Correctional Services. During that time, the department shall conduct a complete study of the offender as provided in section 29-2204.03.

(5) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

(6)(a) When imposing an indeterminate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(ii) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

(b) If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

**Source:** G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974,

LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2; Laws 2015, LB268, § 19; Laws 2015, LB605, § 60; Referendum 2016, No. 426.

**Note:** The changes made to section 29-2204 by Laws 2015, LB 268, section 19, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

Nebraska Juvenile Code, see section 43-2,129.

**29-2206 Fine and costs; commitment until paid; installments; deduction from bond; suspension or revocation of motor vehicle operator's license.**

(1)(a) In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law if the court or magistrate determines that the offender has the financial ability to pay such fines or costs. The court or magistrate may make such determination at the sentencing hearing or at a separate hearing prior to sentencing. A separate hearing shall not be required. In making such determination, the court or magistrate may consider the information or evidence adduced in an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or 29-3916. At any such hearing, the offender shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following such hearing and prior to imposing sentence, the court or magistrate shall determine the offender's financial ability to pay the fines or costs, including his or her financial ability to pay in installments under subsection (2) of this section.

(b) If the court or magistrate determines that the offender is financially able to pay the fines or costs and the offender refuses to pay, the court or magistrate may:

(i) Make it a part of the sentence that the offender stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law; or

(ii) Order the offender, in lieu of paying such fines or costs, to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(c) If the court or magistrate determines that the offender is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Impose a sentence without such fines or costs; or

(B) Enter an order pursuant to subdivision (1)(d) of this section discharging the offender of such fines or costs; and

(ii) May order, as a term of the offender's sentence or as a condition of probation, that he or she complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(d) An order discharging the offender of any fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) If the court or magistrate determines, pursuant to subsection (1) of this section, that an offender is financially unable to pay such fines or costs in one lump sum but is financially capable of paying in installments, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of fines or costs by installments, the revocation or suspension shall be effective as of the date of judgment.

(3) As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may deduct fines or costs from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

**Source:** G.S.1873, c. 58, § 500, p. 833; R.S.1913, § 9142; C.S.1922, § 10167; C.S.1929, § 29-2207; R.S.1943, § 29-2206; Laws 1971, LB 1010, § 2; Laws 1974, LB 966, § 1; Laws 1979, LB 111, § 1; Laws 1988, LB 370, § 6; Laws 2012, LB722, § 1; Laws 2017, LB259, § 5.

Operative date July 1, 2019.

**29-2206.01 Fine and costs; payment of installments; violation; penalty; hearing.**

Installments provided for in section 29-2206 shall be paid pursuant to the order entered by the court or magistrate. Any person who fails to comply with the terms of such order shall be liable for punishment for contempt, unless such person has the leave of the court or magistrate in regard to such noncompliance or such person requests a hearing pursuant to section 29-2412 and establishes at such hearing that he or she is financially unable to pay.

**Source:** Laws 1971, LB 1010, § 3; Laws 2017, LB259, § 6.

Operative date July 1, 2019.

**29-2208 Fines or costs; person financially unable to pay; hearing; determination; court or magistrate; powers; order; operate as release.**

(1) A person who has been ordered to pay fines or costs and who has not been arrested or brought into custody as described in subdivision (1)(a) of section 29-2412 but who believes himself or herself to be financially unable to pay such fines or costs may request a hearing to determine such person's financial ability to pay such fines or costs. The hearing shall be scheduled on the first regularly scheduled court date following the date of the request. Pending the hearing, the person shall not be arrested or brought into custody for failure to pay such fines or costs or failure to appear before a court or magistrate on the due date of such fines or costs.

(2) At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall



determine the person's financial ability to pay the fines or costs, including his or her financial ability to pay in installments as described in section 29-2206.

(3) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(a) Deny the person's request for relief; or

(b) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(4) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(a) Shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs; or

(ii) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subsection (5) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(b) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(5) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

**Source:** Laws 2017, LB259, § 12.

Operative date July 1, 2019.

### (c) PROBATION

#### **29-2252 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 actual and necessary expenses 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.  
Effective date July 19, 2018.

**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 preponderance of the evidence that such redaction is warranted in the interests of public safety. The court may permit inspection of the presentence report, substance abuse evaluation, or psychiatric examination or examination of parts of the report, evaluation, or examination by any other person having a proper interest therein whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(8) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation, substance abuse evaluation, or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the 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.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB841, section 3, with LB1034, section 3, to reflect all amendments.

**Note:** The changes made to section 29-2261 by Laws 2015, LB 268, section 20, have been omitted because of the vote on the referendum at the November 2016 general election.

#### Cross References

**Medicine and Surgery Practice Act**, see section 38-2001.

**Mental Health Practice Act**, see section 38-2101.

**Uniform Credentialing Act**, see section 38-101.

**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 infraction, a misdemeanor, or a felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the infraction, misdemeanor, or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the infraction, misdemeanor, or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the infraction, misdemeanor, or felony 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; or

(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.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

(7) The changes made to this section by Laws 2018, LB146, 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 July 19, 2018.

**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.

Effective date July 19, 2018.

#### Cross References

**Child Care Licensing Act**, see section 71-1908.

**Children's Residential Facilities and Placing Licensure Act**, see section 71-1924.

**Sex Offender Registration Act**, see section 29-4001.

## (d) COMMUNITY SERVICE

### 29-2277 Terms, defined.

As used in sections 29-2277 to 29-2279, unless the context otherwise requires:

(1) Agency means any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which

agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative;

(2) Community correctional facility or program has the same meaning as in section 47-621; and

(3) Community service means uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

**Source:** Laws 1986, LB 528, § 1; Laws 2017, LB259, § 7.

Operative date July 1, 2019.

**29-2278 Community service; sentencing; when; failure to perform; effect; exception to eligibility.**

An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court or magistrate shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. The performance or completion of a sentence of community service or an order to complete community service may be supervised or confirmed by a community correctional facility or program or another similar entity, as ordered by the court or magistrate. If an offender fails to perform community service as ordered by the court or magistrate, he or she may be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

**Source:** Laws 1986, LB 528, § 2; Laws 2017, LB259, § 8.

Operative date July 1, 2019.

**29-2279 Community service; length.**

The length of a community service sentence shall be as follows:

(1) Pursuant to section 29-2206, 29-2208, or 29-2412, for an infraction, not less than four nor more than twenty hours;

(2) For a violation of a city ordinance that is an infraction and not pursuant to section 29-2206, 29-2208, or 29-2412, not less than four hours;

(3) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(4) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(5) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(6) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(7) For a Class III felony, not less than four hundred nor more than six thousand hours.

**Source:** Laws 1986, LB 528, § 3; Laws 1997, LB 364, § 15; Laws 2017, LB259, § 9.

Operative date July 1, 2019.



## ARTICLE 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.

Operative date July 19, 2018.

## 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.

Operative date July 1, 2019.

**29-2407 Judgments for fines, costs, and forfeited recognizances; lien; exemptions; duration.**

Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of 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.  
Operative date July 19, 2018.

**Note:** The changes made to section 29-2407 by Laws 2015, LB 268, section 21, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**Exemptions in civil cases,** see section 25-1552 et seq.

**29-2412 Fine and costs; financial ability to pay; hearing; nonpayment; commutation upon confinement; credit; amount.**

(1) Beginning July 1, 2019:

(a) Any person arrested and brought into custody on a warrant for failure to pay fines or costs, for failure to appear before a court or magistrate on the due date of such fines or costs, or for failure to comply with the terms of an order pursuant to sections 29-2206 and 29-2206.01, shall be entitled to a hearing on the first regularly scheduled court date following the date of arrest. The purpose of such hearing shall be to determine the person's financial ability to pay such fines or costs. At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's ability to pay the fines or costs, including his or her financial ability to pay by installment payments as described in section 29-2206;

(b) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(i) Order the person to be confined in the jail of the proper county until the fines or costs are paid or secured to be paid or the person is otherwise discharged pursuant to subsection (4) of this section; or

(ii) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(c) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs; or

(B) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subdivision (1)(d) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(ii) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279; and

(d) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is confined in jail for any fines or costs of prosecution for any criminal offense has no estate with which to pay such fines or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fines or costs, which discharge shall operate as a complete release of such fines or costs.

(3) Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned as part of his or her punishment.

(4)(a) Any person held in custody for nonpayment of fines or costs or for default on an installment shall be entitled to a credit on the fines, costs, or installment of one hundred fifty dollars for each day so held.

(b) In no case shall a person held in custody for nonpayment of fines or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

**Source:** G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7; Laws 2010, LB712, § 17; Laws 2017, LB259, § 11.

**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.

Operative date July 19, 2018.

## ARTICLE 25

### SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section	
29-2501.	Omitted.
29-2502.	Omitted.
29-2519.	Statement of intent.
29-2520.	Aggravation hearing; procedure.
29-2521.	Sentencing determination proceeding.
29-2521.01.	Legislative findings.
29-2521.02.	Criminal homicide cases; review and analysis by Supreme Court; manner.
29-2521.03.	Criminal homicide cases; appeal; sentence; Supreme Court review.
29-2521.04.	Criminal homicide cases; Supreme Court review and analyze; district court; provide records.
29-2521.05.	Aggravating circumstances; interlocutory appeal prohibited.
29-2522.	Sentence; considerations; determination; contents.
29-2523.	Aggravating and mitigating circumstances.
29-2524.	Sections; how construed.
29-2524.01.	Criminal homicide; report filed by county attorney; contents; time of filing.
29-2524.02.	State Court Administrator; criminal homicide report; provide forms.
29-2525.	Capital punishment cases; appeal; procedure; expedited opinion.
29-2527.	Briefs; payment for printing by county.
29-2528.	Death penalty cases; Supreme Court; orders.
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 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.  
Effective date July 19, 2018.

**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 (4) and (5) of section 29-2264.

**Source:** Laws 2018, LB1132, § 2.  
Effective date July 19, 2018.

## 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, or (iv) 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.  
Effective date July 19, 2018.

## 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.

## Section

- 29-3922. Terms, defined.  
 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.  
 Operative date July 19, 2018.

## (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 accounta-

bility because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

**Source:** Laws 1995, LB 646, § 2; Laws 2002, LB 876, § 64; Laws 2003, LB 760, § 9; Laws 2015, LB268, § 26; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3920 by Laws 2015, LB 268, section 26, have been omitted because of the vote on the referendum at the November 2016 general election.

### **29-3922 Terms, defined.**

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

**Source:** Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2; Laws 2015, LB268, § 27; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3922 by Laws 2015, LB 268, section 27, have been omitted because of the vote on the referendum at the November 2016 general election.

### **29-3928 Chief counsel; qualifications; salary.**

The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice of criminal defense, including the defense of capital cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

**Source:** Laws 1995, LB 646, § 10; Laws 2015, LB268, § 28; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3928 by Laws 2015, LB 268, section 28, have been omitted because of the vote on the referendum at the November 2016 general election.

### **29-3929 Chief counsel; duties.**

The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

(1) Supervise the operations of the appellate division, the capital litigation division, the DNA testing division, and the major case resource center;

(2) Prepare a budget and disburse funds for the operations of the commission;

(3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;

(4) Convene or contract for conferences and training seminars related to criminal defense;

(5) Perform other duties as directed by the commission;

(6) Establish and administer projects and programs for the operation of the commission;

(7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;

(9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1995, LB 646, § 11; Laws 2001, LB 659, § 16; Laws 2015, LB268, § 29; Referendum 2016, No. 426.



**Note:** The changes made to section 29-3929 by Laws 2015, LB 268, section 29, have been omitted because of the vote on the referendum at the November 2016 general election.

**29-3930 Commission; divisions established.**

The following divisions are established within the commission:

(1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission;

(3) The violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

(5) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

**Source:** Laws 1995, LB 646, § 12; Laws 2001, LB 659, § 17; Laws 2003, LB 760, § 11; Laws 2015, LB268, § 30; Referendum 2016, No. 426.

**Note:** The changes made to section 29-3930 by Laws 2015, LB 268, section 30, have been omitted because of the vote on the referendum at the November 2016 general election.

**Cross References**

**DNA Testing Act**, see section 29-4116.

**ARTICLE 40**

**SEX OFFENDERS**

(a) SEX OFFENDER REGISTRATION ACT

Section

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

**29-4007 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.

Operative date July 19, 2018.

### (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.  
Effective date July 19, 2018.

**ARTICLE 41  
DNA TESTING**

## (a) DNA IDENTIFICATION INFORMATION ACT

## Section

29-4115.01. State DNA Sample and Data Base Fund; created; use; investment.

## (a) DNA IDENTIFICATION INFORMATION ACT

**29-4115.01 State DNA Sample and Data Base Fund; created; use; investment.**

The State DNA Sample and Data Base Fund is created. The fund shall be maintained by the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2010, LB190, § 6; Laws 2017, LB331, § 21.

## 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.

Effective date July 19, 2018.

## CHAPTER 30

### DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

#### Article.

- 6. Health Care Surrogacy Act. 30-601 to 30-619.
- 7. Family Visitation. 30-701 to 30-713.
- 16. Appeals in Probate Matters. 30-1601.
- 22. Probate Jurisdiction.
  - Part 1—Short Title, Construction, General Provisions. 30-2201.
- 23. Intestate Succession and Wills.
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#### ARTICLE 6

#### HEALTH CARE SURROGACY 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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 with-

drawing 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.  
Effective date July 19, 2018.

## 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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

#### 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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB104, section 21, with LB845, section 14, to reflect all amendments.

#### 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.  
Effective date July 19, 2018.

#### Cross References

**Public Guardianship Act**, see section 30-4101.



**ARTICLE 23**

**INTESTATE SUCCESSION AND WILLS**

PART 2—ELECTIVE SHARE OF SURVIVING SPOUSE

Section

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.

PART 8—GENERAL PROVISIONS

30-2353. Effect of divorce, annulment, and decree of separation.

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.

Effective date July 19, 2018.

PART 5—WILLS

**30-2333 Revocation by divorce or annulment; no revocation by other changes of circumstances.**

(a) For purposes of this section:

(1) Beneficiary, as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; and as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation as defined in section 30-2716, of a security registered in beneficiary form, of a pension, profit-sharing, retirement, or similar benefit plan, or of any other nonprobate transfer at death;

(2) Beneficiary designated in a governing instrument includes a grantee of a deed, a beneficiary of a transfer on death deed, a transfer-on-death beneficiary, a beneficiary of a POD designation, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised;

(3) Disposition or appointment of property includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(4) Divorce or annulment means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30-2353. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(5) Divorced individual includes an individual whose marriage has been annulled;

(6) Governing instrument means a deed, a will, a trust, an insurance or annuity policy, an account with POD designation, a security registered in beneficiary form, a transfer on death deed, a pension, profit-sharing, retirement, or similar benefit plan, an instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type, which is executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse;

(7) Joint tenants with the right of survivorship and community property with the right of survivorship includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution;

(8) Payor means a trustee, an insurer, a business entity, an employer, a government, a governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments;

(9) Relative of the divorced individual's former spouse means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity; and

(10) Revocable, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the

divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) For purposes of this section, subject to subsection (c) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(c) An organization that conducts activities through employees has notice or knowledge of a fact only from the time the information was received by an employee having responsibility to act for the organization, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the organization and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the organization would be materially affected by the information.

(d) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable

(A) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(e) A severance under subdivision (d)(2) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied

upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(f) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

(g) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(h) No change of circumstances other than as described in this section and section 30-2354 effects a revocation.

(i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section, a payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of or has knowledge of the divorce, annulment, or remarriage.

(B) Liability of a payor or other third party which is a financial institution making payment on a jointly owned account or to a beneficiary pursuant to the terms of a governing instrument on an account with a POD designation shall be governed by section 30-2732.

(C) A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture, severance, or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subdivision (i)(1)(A) of this section must be mailed to the payor's or other third party's main office or home, be personally delivered to the payor or other third party, or, in the case of written notice to a person other than a financial institution, be delivered by such other means which establish that the person has knowledge of the divorce, annulment, or remarriage. Written notice to a financial institution with respect to a jointly owned account or an account with a POD designation shall be governed by section 30-2732.

(3) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court that has jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court that has jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(j)(1) A person who purchases property from a former spouse, a relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or any other

person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, a relative of a former spouse, or any other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(k) If a former spouse has notice of the fact that he or she is a former spouse, then any receipt of property or money to which this section applies is received by the former spouse as a trustee for the person or persons who would be entitled to that property under this section.

**Source:** Laws 1974, LB 354, § 55, UPC § 2-508; Laws 2017, LB517, § 1.

## 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 4—FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

## Section

30-2429.01. Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

## PART 8—CREDITORS' CLAIMS

30-2483. Notice to creditors.

30-2488. Allowance of claims; transfer of certain claims; procedures.

## PART 4—FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

**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.

Operative date July 19, 2018.

## PART 8—CREDITORS' CLAIMS

**30-2483 Notice to creditors.**

(a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in

a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void and constitutes neither notice to the department nor a waiver application for purposes of any statute or regulation that requires that a notice or waiver application be provided to the department.

**Source:** Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3.

### **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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

#### 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 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 3—UNIFORM TOD SECURITY REGISTRATION

#### **30-2734 Definitions.**

In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Business means a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or any other legal or commercial entity.

(3) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(4) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(5) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(6) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(7) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the

subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

**Source:** Laws 1993, LB 250, § 20; Laws 2004, LB 999, § 23; Laws 2017, LB138, § 1.

### **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 38**

### **NEBRASKA UNIFORM TRUST CODE**

#### **PART 6—REVOCABLE TRUSTS**

Section

30-3854. (UTC 602) Revocation or amendment of revocable trust.

#### **PART 8—DUTIES AND POWERS OF TRUSTEE**

30-3880. (UTC 815) General powers of trustee; medical assistance reimbursement claim; how treated.

30-3881. (UTC 816) Specific powers of trustee; medical assistance reimbursement claim; how treated.

30-3882. (UTC 817) Distribution upon termination; medical assistance reimbursement claim; how treated.

#### **PART 6—REVOCABLE TRUSTS**

### **30-3854 (UTC 602) Revocation or amendment of revocable trust.**

(UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

(h) The revocation, amendment, and distribution of trust property of a trust pursuant to this section is subject to section 30-2333.

**Source:** Laws 2003, LB 130, § 54; Laws 2004, LB 999, § 26; Laws 2017, LB517, § 6.

#### PART 8—DUTIES AND POWERS OF TRUSTEE

##### **30-3880 (UTC 815) General powers of trustee; medical assistance reimbursement claim; how treated.**

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims

for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4.

#### Cross References

Nebraska Trust Company Act, see section 8-201.01.

### **30-3881 (UTC 816) Specific powers of trustee; medical assistance reimbursement claim; how treated.**

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

- (1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (2) acquire or sell property, for cash or on credit, at public or private sale;
- (3) exchange, partition, or otherwise change the character of trust property;
- (4) deposit trust money in an account in a regulated financial-service institution;
- (5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including 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) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5.

#### Cross References

Nebraska Trust Company Act, see section 8-201.01.

Nebraska Uniform Custodial Trust Act, see section 30-3501.

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

### **30-3882 (UTC 817) Distribution upon termination; medical assistance reimbursement claim; how treated.**

(UTC 817) (a) Except as limited in subsection (d) of this section, upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object

to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Except as limited in subsection (d) of this section, upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) After the death of the trustor occurring after August 30, 2015, a trustee of a revocable trust which has become irrevocable by reason of the death of the trustor shall not transfer trust property to a beneficiary described in section 77-2004 or 77-2005 in relation to the trustor prior to satisfaction of all claims for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the trustor's probate estate. The Department of Health and Human Services may, upon application of a trustee, waive the restriction on transfers established by this subsection in cases in which the department determines that either there is no medical assistance reimbursement due or after the proposed transfer is made there will be sufficient assets remaining in the trust or trustor's probate estate to satisfy all such claims for medical assistance reimbursement. If there is no medical assistance reimbursement due, the department shall waive the restriction within sixty days after receipt of the trustee's request for waiver and the deceased trustor's name and social security number and, if the trustor was predeceased by a spouse, the name and social security number of such spouse. A trustee who is a financial institution as defined in section 77-3801, a trust company chartered pursuant to the Nebraska Trust Company Act, or an attorney licensed to practice in this state may distribute assets from the trust prior to the receipt of the waiver from the department if the trustee signs a recital under oath that states the decedent's name and social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse, and that the trustor was not a recipient of medical assistance and no claims for medical assistance exist under section 68-919. The trustee shall send such recital to the department. A trustee who makes such a recital knowing the recital is false becomes personally liable for medical assistance reimbursement pursuant to section 68-919 to the extent of the assets distributed from the trust necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate. The request for waiver and the recital described in this subsection shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its web site. Any request for waiver or recital that fails to conform with such manner is void.

**Source:** Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

## 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, 31-508.
7. Sanitary and Improvement Districts.
  - (c) District Boundaries. 31-763 to 31-766.
9. County Drainage Act. 31-925.

#### 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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**ARTICLE 5**

**SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES**

Section

31-501. Sanitary drainage district in municipality; organization; petition for election.

31-508. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.

**31-501 Sanitary drainage district in municipality; organization; petition for election.**

Whenever one or more municipalities may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is

obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipalities and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections 31-501 to 31-523 in the manner following: Any one hundred legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections. In the case of municipalities of less than one thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two-thirds of the legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

**Source:** Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601; R.S.1943, § 31-501; Laws 2017, LB113, § 35.

**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.

## (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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

## 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.

## CHAPTER 32

### ELECTIONS

Article.

1. General Provisions and Definitions. 32-101.
2. Election Officials.
  - (a) Secretary of State. 32-204, 32-206.
  - (b) County Election Officials. 32-208.
3. Registration of Voters. 32-301 to 32-330.
4. Time of Elections. 32-404.
5. Officers and Issues.
  - (a) Offices and Officeholders. 32-538 to 32-546.
  - (c) Vacancies. 32-566 to 32-573.
6. Filing and Nomination Procedures. 32-601 to 32-610.
8. Notice, Publication, and Printing of Ballots. 32-802.
9. Voting and Election Procedures. 32-913 to 32-947.
10. Counting and Canvassing Ballots. 32-1007.
11. Contest of Elections and Recounts. 32-1101 to 32-1116.
13. Recall. 32-1303.
14. Initiatives, Referendums, and Advisory Votes. 32-1412.

#### ARTICLE 1

#### GENERAL PROVISIONS AND DEFINITIONS

Section

32-101. Act, how cited.

**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.  
Operative date July 1, 2019.

#### ARTICLE 2

#### ELECTION OFFICIALS

##### (a) SECRETARY OF STATE

Section

- 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.

## (a) SECRETARY OF STATE

**32-204 Election Administration Fund; created; use; investment.**

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration, training or informational materials related to elections, and any other costs related to elections. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any funds in the Carbon Sequestration Assessment Cash Fund on August 24, 2017, to the Election Administration Fund.

**Source:** Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1; Laws 2014, LB661, § 2; Laws 2017, LB644, § 3.

## 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.  
Effective date April 18, 2018.

## (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.

### 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.  
Operative date July 1, 2019.

### **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.  
Operative date July 1, 2019.

### **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.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1038, section 2, with LB1065, section 4, to reflect all amendments.

**Note:** Changes made by LB1038 became effective April 18, 2018. Changes made by LB1065 became operative July 1, 2019.

### **32-312 Registration application; contents.**

The registration application prescribed by the Secretary of State pursuant to section 32-304 or 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

**CITIZENSHIP**—“Are you a citizen of the United States of America?” with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

**AGE**—“Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?” with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

**WARNING**—“If you checked ‘no’ in response to either of these questions, do not complete this application.”.

**NAME**—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

**RESIDENCE**—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant’s place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

**POSTAL ADDRESS**—the address at which the applicant receives mail if different from the residence address.

**ADDRESS OF LAST REGISTRATION**—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

**TELEPHONE NUMBERS**—the telephone number of the applicant at work and at home. At the request of the applicant, a designation shall be made that the telephone number is an unlisted number, and such designation shall preclude the listing of the applicant’s telephone number on any list of voter registrations.

**EMAIL ADDRESS**—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant’s email address on any list of voter registrations.

**DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER**—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

**DATE OF APPLICATION FOR REGISTRATION**—the month, day, and year when the applicant presented himself or herself for registration, when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent, or when the completed application was submitted if the registration application was completed pursuant to section 32-304.

**PLACE OF BIRTH**—show the state, country, kingdom, empire, or dominion where the applicant was born.

**DATE OF BIRTH**—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

**REGISTRATION TAKEN BY**—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

**PARTY AFFILIATION**—show the party affiliation of the applicant as Democrat, Republican, or Other . . . . . or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

**OTHER**—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

- (1) I live in the State of Nebraska at the address provided in this application;
- (2) I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term;
- (3) I have not been officially found to be non compos mentis (mentally incompetent); and
- (4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.



APPLICANT’S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3; Laws 2014, LB661, § 7; Laws 2017, LB451, § 5.

**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 election commissioner, 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 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 election commissioner or county clerk shall make available for purchase a list of registered voters that contains the information required under section 32-312 and, if requested, a list that only contains registered voters who have voted in an election held more than thirty days prior to the request for the list. The 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) Any person who acquires a list of registered voters under subsection (2) of this section 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, 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. . . .

(Name of officer) . . . . .

(Official title of officer) . . . . .

(4) The 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.

(5) The 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 state party headquarters of each political party and to the county chairperson of each political party. Such list shall be provided no later than thirty-five days prior to the statewide primary and statewide general elections.

**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.

Operative date July 1, 2019.

#### ARTICLE 4

#### TIME OF ELECTIONS

##### Section

32-404. Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.

##### **32-404 Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms.**

(1) When any political subdivision holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by a political subdivision shall be held as provided in the act unless otherwise provided by the charter, code, or bylaws of the political subdivision.

(2) No later than December 1 of each odd-numbered year, the election commissioner or county clerk shall give notice to each political subdivision of the filing deadlines for the statewide primary election. No later than January 5 of each even-numbered year, the governing board of each political subdivision which will hold an election in conjunction with a statewide primary election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(3) No later than June 15 of each even-numbered year, the governing board of each reclamation district, county weed district, village, county under township organization, public power district receiving annual gross revenue of less than forty million dollars, or educational service unit which will hold an election in conjunction with a statewide general election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(4) The Secretary of State shall prescribe the forms to be used for certification to him or her, and the election commissioner or county clerk shall prescribe the forms to be used for certification to him or her.

**Source:** Laws 1994, LB 76, § 96; Laws 1997, LB 764, § 46; Laws 2004, LB 927, § 1; Laws 2017, LB451, § 6.

**ARTICLE 5**  
**OFFICERS AND ISSUES**

(a) OFFICES AND OFFICEHOLDERS

Section

- 32-538. City with city manager plan of government; city council; members; wards; terms; change in number; procedure.
- 32-539. City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.
- 32-541. Repealed. Laws 2018, LB377, § 87.
- 32-542. Repealed. Laws 2018, LB377, § 87.
- 32-546. Repealed. Laws 2018, LB377, § 87.

(c) VACANCIES

- 32-566. Legislature; vacancy; 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; wards; terms; change in number; procedure.**

(1) In a city which adopts the city manager plan of government pursuant to sections 19-601 to 19-610, the number of city council members shall be determined by the class and population of the city. In cities having one thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, and in cities having more than forty thousand but less than two hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be seven members, except that in cities having between twenty-five thousand and forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council may by ordinance provide for seven members. Council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of its council members by wards, the number and boundaries of which are provided for in section 16-104. Council members shall serve for terms of four years or until their successors are elected and qualified. The council members shall meet the qualifications found in sections 19-613 and 19-613.01.

The first election under an ordinance changing the number of council members or their manner of election shall take place at the next regular city election. Council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of council members or their manner of election, one-half or the bare majority of council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed,

for two years, as provided in the ordinance. If only one council member is to be elected at large at such first election, such member shall serve for four years.

(2) Commencing with the statewide primary election in 1976, and every two years thereafter, those candidates whose terms will be expiring shall be nominated at the statewide primary election and elected at the statewide general election.

**Source:** Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37.

**32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.**

(1) In a city which adopts the commission plan of government pursuant to sections 19-401 to 19-433, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be elected from the city at large. In cities of the primary class, three excise members shall be elected in addition to the five council members. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) In cities containing two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, at the city council election in 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of four years. If a city elects to adopt the commission plan of government after 1980, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

**Source:** Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3; Laws 2017, LB113, § 38.

**32-541 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**32-542 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**32-546 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

(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.

**32-570 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.  
Operative date January 1, 2019.

**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.
- 32-606. Candidate filing form; filing period.
- 32-607. Candidate filing forms; contents; filing officers.
- 32-610. Partisan elections; candidate; requirements.

**32-601 Political subdivision; offices to be filled; filing deadlines; notices required.**

(1) Each political subdivision shall notify the election commissioner or county clerk of the offices to be filled no later than:

(a) January 5 of any election year as provided in subsection (2) of section 32-404; or

(b) June 15 of any election year as provided in subsection (3) of section 32-404.

(2) The election commissioner or county clerk shall give notice of the offices to be filled by election and the filing deadlines for such offices by publication in at least one newspaper of general circulation in the county once at least fifteen days prior to such deadlines.

**Source:** Laws 1994, LB 76, § 169; Laws 2017, LB451, § 9.

**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.

**32-606 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. 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, except for candidates for election in 2013 to the board of education of a Class V school district. 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. Incumbent and nonincumbent candidates for election in 2013 to the board of education of a Class V school district and 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. 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.

**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.  
Operative date January 1, 2019.

### **32-607 Candidate filing forms; contents; filing officers.**

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the following information regarding the candidate: Name; residence address; mailing address if different from the residence address; telephone number; office sought; party affiliation if the office sought is a partisan office; a statement as to whether or not civil penalties are owed pursuant to the Nebraska Political Accountability and Disclosure Act; and, if civil penalties are owed, whether or not a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

**Source:** Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3; Laws 2015, LB575, § 15; Laws 2017, LB85, § 2.

#### **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.

**ARTICLE 8**

**NOTICE, PUBLICATION, AND PRINTING OF BALLOTS**

Section

32-802. Notice of election; contents.

**32-802 Notice of election; contents.**

The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty-two days prior to the election. The election commissioner or county clerk shall, not later than forty-two days prior to the election, (1) post in his or her office the same notice of election published in the newspaper and (2) provide a copy of the notice to the political subdivisions appearing on the ballot. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within five days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

**Source:** Laws 1994, LB 76, § 223; Laws 2002, LB 935, § 6; Laws 2017, LB451, § 10.

**ARTICLE 9**

**VOTING AND ELECTION PROCEDURES**

Section

- 32-913. Precinct list of registered voters; sign-in register; preparation and use.
- 32-915. Provisional ballot; conditions; certification.
- 32-939. Nebraska resident residing outside the state or country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.
- 32-939.02. Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties; oath.

Section  
32-947. Ballot to vote early; delivery; procedure; identification envelope;  
instructions.

**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.  
Operative date July 1, 2019.

**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 identifica-

tion 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.

**32-939 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 FALSIFICA-

TION 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.

## ARTICLE 10 COUNTING AND CANVASSING BALLOTS

Section  
32-1007. Ballots; write-in votes; improper name; rejected.

### **32-1007 Ballots; write-in votes; improper name; rejected.**

For members of a village board of trustees or township officers, if a first or generally recognized name and last name of a person is filled in on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and



the ballot shall be counted. 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.  
Operative date January 1, 2019.

**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.

**32-1101 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.  
Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**Cross References**

Legislative Qualifications and Election Contests Act, see section 50-1501.

## ARTICLE 13

## RECALL

## Section

32-1303. Recall petition; signers and circulators; requirements; notification.

**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 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, an affidavit 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 affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form 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 affidavit 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 typewritten form 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 affidavit. The principal circulator or circulators shall gather the petition papers within twenty days after the receipt of the official's defense statement. 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.

Operative date January 1, 2019.

## ARTICLE 14

### INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

32-1412. Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

#### **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.

Operative date July 19, 2018.

#### Cross References

Administrative Procedure Act, see section 84-920.



## CHAPTER 33

### FEES AND SALARIES

#### Section

- 33-101. Secretary of State; 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.
- 33-140.03. 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 recording articles of association or incorporation, amendments, revised or restated articles, changes of registered office or registered agent, increase or decrease of capital stock, merger or consolidation, statement of intent to dissolve, and consent to dissolution, revocation of dissolution, articles of dissolution, domestic or foreign, profit or nonprofit, five dollars per page;

(5) For taking acknowledgment, ten dollars;

(6) For administering oath, ten dollars;

(7) 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

(8) 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.

All fees collected pursuant to subdivision (3) of this section shall be deposited in the Records Management Cash Fund and 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.  
Effective date July 19, 2018.

#### Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

### **33-106 Clerk of the district court; fees; enumerated.**

(1) In addition to the judges' retirement fund fee provided in section 24-703 and the fees provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as follows: There shall be a docket fee of forty-two dollars for each civil and criminal case except (a) a case commenced by filing a transcript of judgment as hereinafter provided, (b) proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged, and (c) a criminal case appealed to the district court from any court inferior thereto as hereinafter provided. There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien. There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.



(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other 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.  
Operative date July 19, 2018.

#### 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.  
Operative date July 19, 2018.

### **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.

(3) No fees shall be received for recording instruments for the Department of Health and Human Services pursuant to section 68-990.

**Source:** Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4; Laws 2017, LB152, § 2; Laws 2017, LB268, § 7.

### **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. Operative date July 19, 2018.

### **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. Operative date July 19, 2018.

## 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.  
Effective date July 19, 2018.

## CHAPTER 35

### FIRE COMPANIES AND FIREFIGHTERS

Article.

1. Volunteer Fire Companies. 35-102.
5. Rural and Suburban Fire Protection Districts. 35-507 to 35-540.

#### 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.

Operative date July 19, 2018.

#### ARTICLE 5

#### RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section

- 35-507. District; meeting; when held.
- 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.

##### **35-507 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.

**35-514 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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.



## CHAPTER 37

### GAME AND PARKS

#### Article.

2. Game Law General Provisions. 37-201.
3. Commission Powers and Duties.
  - (b) Funds. 37-327.02.
5. Regulations and Prohibited Acts.
  - (a) General Provisions. 37-504.
  - (b) Game, Birds, and Aquatic Invasive Species. 37-513.
6. Enforcement. 37-613 to 37-617.
12. State Boat Act. 37-1201 to 37-1293.
16. Interstate Wildlife Violator Compact. 37-1601.
17. State Park System Construction Alternatives Act. 37-1701 to 37-1732.

#### ARTICLE 2

#### GAME LAW GENERAL PROVISIONS

#### Section

37-201. Law, how cited.

#### **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.  
Effective date July 19, 2018.

#### Cross References

State Park System Construction Alternatives Act, see section 37-1701.

#### ARTICLE 3

#### COMMISSION POWERS AND DUTIES

#### (b) FUNDS

#### Section

37-327.02. Game and Parks Commission Capital Maintenance Fund; created; use; investment.

## (b) FUNDS

**37-327.02 Game and Parks Commission Capital Maintenance Fund; created; use; investment.**

The Game and Parks Commission Capital Maintenance Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132, transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Transfers may be made from the Game and Parks Commission Capital Maintenance Fund to the General Fund at the direction of the Legislature through June 30, 2019. The State Treasurer shall transfer four million five hundred thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the General Fund between June 1, 2018, and June 30, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer 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.

Effective date April 5, 2018.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 5

## REGULATIONS AND PROHIBITED ACTS

## (a) GENERAL PROVISIONS

Section

37-504. Violations; penalties; exception.

## (b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

37-513. Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

## (a) GENERAL PROVISIONS

**37-504 Violations; penalties; exception.**

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession:

(a) Any deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for each violation; or

(b) Any elk shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one thousand dollars for each violation.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class I misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars for each animal unlawfully taken or unlawfully possessed up to the maximum fine authorized by law upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

**Source:** Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28; Laws 2017, LB566, § 2.

#### (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.

## 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.  
Operative date July 19, 2018.

### **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 12  
STATE BOAT ACT**

Section

- 37-1201. Act, how cited; declaration of policy.
- 37-1278. Certificate of title; application; contents; issuance; transfer of motorboat.
- 37-1279. Certificate of title; issuance; form; county treasurer; duties; filing.
- 37-1280. 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.
- 37-1293. 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.

**37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.**

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 76-1607 shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a

court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i) the full legal name as defined in section 60-468.01 of each owner and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

**Source:** Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2; Laws 2017, LB492, § 10.

#### 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 shall adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290, and the county treasurers shall conform to the 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.  
Effective date April 12, 2018.

**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.

**Note:** Changes made by LB909 became effective April 12, 2018. Changes made by LB193 became operative January 1, 2019.

**Cross References**

**Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.**

**37-1285 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. Effective date April 12, 2018.

**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.  
Effective date April 12, 2018.

**37-1287 Fees; disposition.**

(1) The county treasurers or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county treasurers shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county treasurers or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county treasurers or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county treasurers or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county treasurers shall remit fees due the State Treasurer under this section monthly and not later than the twentieth day of the month following collection. The county treasurers shall credit fees not due to the State Treasurer to their respective county general fund.

**Source:** Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1; Laws 2012, LB801, § 23; Laws 2017, LB263, § 6.  
Operative date January 1, 2019.

**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. The county treasurer shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the motorboat.

**Source:** Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26; Laws 2018, LB909, § 6.

Effective date April 12, 2018.

## 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.
- 37-1707. Construction manager-general contractor contract, defined.
- 37-1708. Construction services, defined.
- 37-1709. Design-build contract, defined.
- 37-1710. Design-builder, defined.
- 37-1711. Preconstruction services, defined.
- 37-1712. Project performance criteria, defined.
- 37-1713. Proposal, defined.
- 37-1714. Qualification-based selection process, defined.
- 37-1715. Request for proposals, defined.
- 37-1716. Request for qualifications, defined.
- 37-1717. Purpose.
- 37-1718. Contracts authorized.
- 37-1719. Architect; engineer; hiring authorized.
- 37-1720. Guidelines for entering into contracts.
- 37-1721. Process for selecting design-builder and entering into contract.
- 37-1722. Request for qualifications; prequalify design-builders; publication in newspaper; short list.
- 37-1723. Design-build contract; request for proposals; contents.
- 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.
- 37-1728. Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.
- 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**37-1705 Commission, defined.**

Commission means the Game and Parks Commission.

**Source:** Laws 2018, LB775, § 6.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**37-1708 Construction services, defined.**

Construction services means activities associated with building the project.

**Source:** Laws 2018, LB775, § 9.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**37-1715 Request for proposals, defined.**

Request for proposals means the documentation by which the commission solicits proposals.

**Source:** Laws 2018, LB775, § 16.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

#### **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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**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 negotia-

tions 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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

## CHAPTER 38

### HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-101 to 38-1,125.
2. Advanced Practice Registered Nurse Practice Act. 38-208.
3. Alcohol and Drug Counseling Practice Act. 38-319, 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 38-10,171.
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. 38-1711, 38-1712.
18. Medical Nutrition Therapy Practice Act. 38-1814.
19. Medical Radiography Practice Act. 38-1917, 38-1917.02.
20. Medicine and Surgery Practice Act. 38-2001 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.
27. Perfusion Practice Act. 38-2701 to 38-2712.
28. Pharmacy Practice Act. 38-2801 to 38-28,116.
29. Physical Therapy Practice Act. 38-2924.
31. Psychology Practice Act. 38-3101 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.
40. Physical Therapy Licensure Compact. 38-4001.

#### ARTICLE 1

#### UNIFORM CREDENTIALING ACT

Section

- |            |   |
|------------|---|
| 38-101.    | Act, how cited.   |
| 38-105.    | Definitions, where found.   |
| 38-118.01. | Military spouse, defined.   |
| 38-120.01. | Telehealth, defined.  |
| 38-120.02. | Telemonitoring, defined.  |
| 38-121.    | Practices; credential required.                                       |
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## Section

- 38-126. Rules and regulations; board and department; adopt.
- 38-129.01. Temporary credential to military spouse; issuance; period valid.
- 38-131. Criminal background check; when required.
- 38-145. Continuing competency requirements; board; duties.
- 38-186. Credential; discipline; petition by Attorney General; hearing; department; powers and duties.
- 38-1,124. Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report.
- 38-1,125. Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

**38-101 Act, how cited.**

Sections 38-101 to 38-1,142 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Dialysis Patient Care Technician Registration Act;
- (12) The Emergency Medical Services Practice Act;
- (13) The Environmental Health Specialists Practice Act;
- (14) The Funeral Directing and Embalming Practice Act;
- (15) The Genetic Counseling Practice Act;
- (16) The Hearing Instrument Specialists Practice Act;
- (17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;
- (18) The Massage Therapy Practice Act;
- (19) The Medical Nutrition Therapy Practice Act;
- (20) The Medical Radiography Practice Act;
- (21) The Medicine and Surgery Practice Act;
- (22) The Mental Health Practice Act;
- (23) The Nurse Practice Act;
- (24) The Nurse Practitioner Practice Act;
- (25) The Nursing Home Administrator Practice Act;
- (26) The Occupational Therapy Practice Act;
- (27) The Optometry Practice Act;



- (28) The Perfusion Practice Act;
- (29) The Pharmacy Practice Act;
- (30) The Physical Therapy Practice Act;
- (31) The Podiatry Practice Act;
- (32) The Psychology Practice Act;
- (33) The Respiratory Care Practice Act;
- (34) The Surgical First Assistant Practice Act;
- (35) The Veterinary Medicine and Surgery Practice Act; and
- (36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,142 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.

**Source:** Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3; Laws 2018, LB701, § 1.

Effective date July 19, 2018.

#### 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 38-120.02 apply.

**Source:** Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2.  
Effective date July 19, 2018.

### **38-118.01 Military spouse, defined.**

Military spouse means the spouse of an officer or enlisted person on active duty in the armed forces of the United States.

**Source:** Laws 2017, LB88, § 30.

### **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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

### **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.

Effective date July 19, 2018.

### **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.

**38-129.01 Temporary credential to military spouse; issuance; period valid.**

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential

under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a temporary license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

(a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;

(b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential;

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131; and

(e) The fees required pursuant to sections 38-151 to 38-157 for the application for the credential and for the temporary credential.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is a resident of Nebraska, is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, has submitted fingerprints for a criminal background check if required under section 38-131, and has paid the applicable fees pursuant to sections 38-151 to 38-157, the department shall issue a temporary credential to the applicant.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

**Source:** Laws 2017, LB88, § 33.

### **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.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB731, section 1, with LB1034, section 5, to reflect all amendments.

**Note:** Changes made by LB731 became operative July 19, 2018. Changes made by LB1034 became effective July 19, 2018.

### **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. Operative date July 19, 2018.

**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.

## 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.

Effective date July 19, 2018.

#### **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.  
Effective date July 19, 2018.

#### 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.

## ARTICLE 10

### COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Section	
38-1001.	Act, how cited.
38-1004.	Definitions, where found.
38-1005.	Apprentice, defined.
38-1013.	Repealed. Laws 2018, LB731, § 106.
38-1014.	Repealed. Laws 2018, LB731, § 106.
38-1017.	Cosmetology establishment, defined.
38-1018.	Cosmetology salon, defined.
38-1022.	Repealed. Laws 2018, LB731, § 106.
38-1028.	Esthetics salon, defined.
38-1029.	Repealed. Laws 2018, LB731, § 106.
38-1030.	Repealed. Laws 2018, LB731, § 106.
38-1033.01.	Mobile cosmetology salon, defined.
38-1033.02.	Mobile nail technology salon, defined.
38-1036.	Nail technology establishment, defined.
38-1038.	Nail technology salon, defined.
38-1043.	Nonvocational training, defined.
38-1058.	Cosmetology; licensure required.
38-1061.	Licensure; categories; use of titles prohibited; practice in licensed establishment or facility.
38-1062.	Licensure by examination; requirements.
38-1063.	Application for examination.
38-1065.	Examinations; requirements; grades.
38-1066.	Reciprocity; requirements; military spouse; temporary license.
38-1067.	Foreign-trained applicants; examination requirements.
38-1069.	License; when required; temporary practitioner; license.
38-1070.	Temporary license; general requirements.
38-1071.	Repealed. Laws 2018, LB731, § 106.
38-1072.	Repealed. Laws 2018, LB731, § 106.
38-1073.	Licensure as temporary practitioner; requirements.
38-1074.	Temporary licensure; expiration dates; extension.
38-1075.	Act; activities exempt.
38-1086.	Licensed salon; operating requirements.
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.
38-1099.	School of cosmetology license; school of esthetics license; application; additional information.
38-10,100.	School of esthetics license; application; additional information.
38-10,102.	Licensed school; operating requirements.
38-10,103.	School or apprentice salon; operation; student; apprentice; student instructor; requirements.
38-10,104.	Licensed school; additional operating requirements.
38-10,105.	Transfer of cosmetology student; requirements.
38-10,106.	Repealed. Laws 2018, LB731, § 106.

## Section

- 38-10,107. Licensed barber; licensed cosmetologist; waiver of course requirements; conditions.
- 38-10,108. School of cosmetology; student instructors; limitation.
- 38-10,112. School; owner; liability; manager required.
- 38-10,120. Home services permit; issuance.
- 38-10,125.01. Mobile cosmetology salon; license; requirements.
- 38-10,125.02. Mobile cosmetology salon license; application.
- 38-10,125.03. Mobile cosmetology salon; application; review; denial; inspection.
- 38-10,125.04. Mobile cosmetology salon; operating requirements.
- 38-10,125.05. Mobile cosmetology salon license; renewal.
- 38-10,125.06. Mobile cosmetology salon license; revocation or expiration; effect.
- 38-10,125.07. Mobile cosmetology salon license; change of ownership or mobile unit; effect.
- 38-10,125.08. Mobile cosmetology salon; owner liability.
- 38-10,128. Nail technician or instructor; licensure by examination; requirements.
- 38-10,129. Application for nail technology licensure; procedure.
- 38-10,131. Examinations; requirements; grades.
- 38-10,132. Nail technician or instructor; reciprocity; requirements; military spouse; temporary license.
- 38-10,133. Nail technology license; display.
- 38-10,135. Nail technology temporary practitioner; application; qualifications.
- 38-10,142. Nail technology salon; operating requirements.
- 38-10,147. Nail technology school; license; requirements.
- 38-10,150. Nail technology school; license; application; requirements.
- 38-10,152. Nail technology school; operating requirements.
- 38-10,153. Nail technology school; students; requirements.
- 38-10,154. Nail technology school; transfer of students.
- 38-10,155. Repealed. Laws 2018, LB731, § 106.
- 38-10,156. Nail technology school; student instructor limit.
- 38-10,158.01. Mobile nail technology salon; license; requirements.
- 38-10,158.02. Mobile nail technology salon license; application.
- 38-10,158.03. Mobile nail technology salon; application; review; denial; inspection.
- 38-10,158.04. Mobile nail technology salon; operating requirements.
- 38-10,158.05. Mobile nail technology salon license; renewal.
- 38-10,158.06. Mobile nail technology salon license; revocation or expiration; effect.
- 38-10,158.07. Mobile nail technology salon license; change of ownership or mobile unit; effect.
- 38-10,158.08. Mobile nail technology salon; owner liability.
- 38-10,171. Unprofessional conduct; acts enumerated.

**38-1001 Act, how cited.**

Sections 38-1001 to 38-10,171 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

**Source:** Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263; Laws 2016, LB898, § 1; Laws 2018, LB731, § 3.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**38-1013 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1014 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**38-1022 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**38-1029 Repealed. Laws 2018, LB731, § 106.**  
Operative date July 19, 2018.

**38-1030 Repealed. Laws 2018, LB731, § 106.**  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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, Esthet-

ics, 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. Operative date July 19, 2018.

### **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. Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

#### 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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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 jurisdic-

tion 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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**38-1071 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1072 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

**38-1091 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1092 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1093 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1094 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1095 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**38-1096 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **38-10,106 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

#### **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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.

Operative date January 1, 2019.

### **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.

Operative date January 1, 2019.

### **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.

Operative date January 1, 2019.

**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.  
Operative date January 1, 2019.

#### **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.  
Operative date January 1, 2019.

#### **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.  
Operative date January 1, 2019.

#### **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.  
Operative date January 1, 2019.

#### **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.  
Operative date January 1, 2019.

#### **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.  
Operative date July 19, 2018.

#### 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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

### **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.

Operative date July 19, 2018.

#### **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.

Operative date July 19, 2018.

#### **38-10,155 Repealed. Laws 2018, LB731, § 106.**

Operative date July 19, 2018.

#### **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.

Operative date July 19, 2018.

**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.

Operative date January 1, 2019.

**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.

Operative date January 1, 2019.

**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.

Operative date January 1, 2019.

**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.

Operative date January 1, 2019.

#### **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.

Operative date January 1, 2019.

#### **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.

Operative date January 1, 2019.

#### **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.

Operative date January 1, 2019.

#### **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.

Operative date January 1, 2019.

**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.  
 Operative date July 19, 2018.

## ARTICLE 11

### DENTISTRY PRACTICE ACT

#### Section

- 38-1101. Act, how cited.
- 38-1102. Definitions, where found.
- 38-1102.01. Accredited dental assisting program, defined.
- 38-1107. Dental assistant, defined.
- 38-1107.01. Expanded function dental assistant, defined.
- 38-1107.02. Expanded function dental hygienist, defined.
- 38-1111.01. Licensed dental assistant, defined.
- 38-1111.02. Licensed dental hygienist, defined.
- 38-1116. Dentistry practice; exceptions.
- 38-1118.01. Expanded function dental hygiene; application for permit; qualifications.
- 38-1118.02. Licensed dental assistant; application for license; qualifications.
- 38-1118.03. Expanded function dental assistant; application for permit; qualifications.
- 38-1119. Reexamination; requirements.
- 38-1121. Dental hygienist; licensed dental assistant; reciprocity; requirements; military license; temporary license.
- 38-1127.01. Expanded function dental assistant; expanded function dental hygienist; display of permit.
- 38-1130. Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.
- 38-1131. Licensed dental hygienist; procedures and functions authorized; enumerated.
- 38-1132. Licensed dental hygienist; activities related to analgesia authorized; administer local anesthesia; when.
- 38-1135. Dental assistants, licensed dental assistants, and expanded function dental assistants; employment; duties performed; rules and regulations.
- 38-1136. Licensed dental hygienists and expanded function dental hygienists; employment authorized; performance of duties; rules and regulations; license or permit required.
- 38-1136.01. Licensed dental assistant; additional functions, procedures, and services.
- 38-1152. Expanded function dental hygienist; authorized activities.

#### **38-1101 Act, how cited.**

Sections 38-1101 to 38-1152 shall be known and may be cited as the Dentistry Practice Act.

**Source:** Laws 2007, LB463, § 434; Laws 2015, LB80, § 1; Laws 2017, LB18, § 1.

#### **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.**

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and inservice training sessions on dental health; and all of the duties that a dental assistant who is not licensed is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services to children in a public health setting or in a health care or related facility:

(i) Oral prophylaxis to healthy children who do not require antibiotic premedication;

(ii) Pulp vitality testing;

(iii) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of

current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4)(a) The department may authorize a licensed dental hygienist who has completed three thousand hours of clinical experience to perform the following functions in the conduct of public health-related services to adults in a public health setting or in a health care or related facility:

(i) Oral prophylaxis;

(ii) Pulp vitality testing;

(iii) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique;

(v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay; and

(vi) Upon completion of education and testing approved by the board, minor denture adjustments.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of three thousand hours of clinical experience. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report on a form developed and provided by the department authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(5) The department shall compile the data from the reports provided under subdivisions (3)(c)(i) and (4)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health.

(6) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other

similar program or agency that serves primarily public health care program recipients.

(7) Within five years after September 6, 2013, the Health and Human Services Committee of the Legislature shall evaluate the services provided by licensed dental hygienists pursuant to this section to ascertain the effectiveness of such services in the delivery of oral health care and shall provide a report on such evaluation to the Legislature. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1; Laws 2017, LB18, § 16.

**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.
38-1204.	Definitions, where found.
38-1204.01.	Advanced emergency medical technician practice of out-of-hospital emergency medical care, defined.
38-1205.	Ambulance, defined.
38-1206.01.	Emergency medical responder practice of out-of-hospital emergency medical care, defined.
38-1207.01.	Emergency medical technician practice of out-of-hospital emergency medical care, defined.
38-1207.02.	Emergency medical technician-intermediate practice of out-of-hospital emergency medical care, defined.
38-1208.	Out-of-hospital emergency care provider.
38-1208.01.	Paramedic practice of out-of-hospital emergency medical care, defined.
38-1208.02.	Practice of out-of-hospital emergency medical care, defined.
38-1215.	Board; members; terms; meetings; removal.
38-1216.	Board; duties.
38-1217.	Rules and regulations.
38-1218.	Curricula for licensure classification; board; powers; military spouse; temporary license.
38-1218.01.	Decisions of Interstate Commission for Emergency Medical Services Personnel Practice; board; duties.
38-1219.	Department; additional rules and regulations.
38-1221.	License; requirements.
38-1224.	Duties and activities authorized; limitations.
38-1225.	Patient data; confidentiality; immunity.
38-1229.	License; person on national registry.
38-1232.	Individual liability.
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.  
Effective date July 19, 2018.

**38-1204 Definitions, where found.**

For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1205 to 38-1214 apply.

**Source:** Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488; Laws 2018, LB1034, § 9.

Effective date July 19, 2018.

**38-1204.01 Advanced emergency medical technician practice of out-of-hospital emergency medical care, defined.**

Advanced emergency medical technician practice of out-of-hospital 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.

Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**38-1206.01 Emergency medical responder practice of out-of-hospital emergency medical care, defined.**

Emergency medical responder practice of out-of-hospital 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.

Effective date July 19, 2018.

**38-1207.01 Emergency medical technician practice of out-of-hospital emergency medical care, defined.**

Emergency medical technician practice of out-of-hospital 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.  
Effective date July 19, 2018.

**38-1207.02 Emergency medical technician-intermediate practice of out-of-hospital emergency medical care, defined.**

Emergency medical technician-intermediate practice of out-of-hospital 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.  
Effective date July 19, 2018.

**38-1208 Out-of-hospital emergency care provider.**

Out-of-hospital emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act. Prior to December 31, 2025, out-of-hospital emergency care provider includes out-of-hospital advanced emergency medical technician, emergency medical responder, emergency medical technician, emergency medical technician-intermediate, and paramedic. On and after December 31, 2025, out-of-hospital emergency care provider includes advanced emergency medical technician, emergency medical responder, emergency medical technician, and paramedic.

**Source:** Laws 2007, LB463, § 492; Laws 2018, LB1034, § 15.  
Effective date July 19, 2018.

**38-1208.01 Paramedic practice of out-of-hospital emergency medical care, defined.**

Paramedic practice of out-of-hospital 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.  
Effective date July 19, 2018.

**38-1208.02 Practice of out-of-hospital emergency medical care, defined.**

Practice of out-of-hospital 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, 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 prior to or during transportation to a hospital or for routine transportation between health care facilities or services. 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.  
Effective date July 19, 2018.

**38-1215 Board; members; terms; meetings; removal.**

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active out-of-hospital emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are out-of-hospital emergency care providers, two shall be 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 out-of-hospital emergency medical care education, one member who is a registered nurse with at least five years of experience and active in out-of-hospital emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of out-of-hospital emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board 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.

Effective date July 19, 2018.

#### 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 out-of-hospital emergency medical care and other out-of-hospital medical information, including appropriate methods of medical self-help, first aid, and the availability of out-of-hospital emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of out-of-hospital emergency medical care, evaluate the availability and quality of out-of-hospital emergency medical care, and serve as a focal point for discussion of the provision of out-of-hospital emergency medical care;

(3) Establish model procedures for patient management in out-of-hospital medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during an out-of-hospital medical emergency;

(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 out-of-hospital emergency medical care needs of the citizens 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 out-of-hospital emergency care providers and emergency medical services.

**Source:** Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500; Laws 2012, LB782, § 38; Laws 2018, LB1034, § 19.

Effective date July 19, 2018.

### **38-1217 Rules and regulations.**

The board shall adopt rules and regulations necessary to:

(1) Create licensure requirements for advanced emergency medical technicians, 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 out-of-hospital 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 out-of-hospital 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 out-of-hospital emergency care provider relocating to Nebraska, if such out-of-hospital 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 out-of-hospital emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(6) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(7) Provide for the approval of 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 out-of-hospital emergency care provider or emergency medical service before or after adoption;

(10) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(11) Establish renewal and reinstatement requirements for out-of-hospital 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 out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(12) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(13) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians, or paramedics performing activities within their scope of practice at a hospital or health clinic under section 38-1224. Such criteria shall include, but not be limited to, a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision, health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419; and

(14) Establish 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.

Effective date July 19, 2018.

#### 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 out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

(3) An applicant for licensure for a licensure classification listed in subdivision (1) 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.

Effective date July 19, 2018.

#### **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.

Effective date July 19, 2018.

## 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

## Cross References

**Credentialing**, general requirements and issuance procedures, see section 38-121 et seq.

**38-1224 Duties and activities authorized; limitations.**

(1) An out-of-hospital emergency care provider other than an emergency medical responder may not assume the duties incident to the title or practice the skills of an out-of-hospital emergency care provider unless he or she (a) is acting under the supervision of a licensed health care practitioner or under the direction of a registered nurse and (b) is employed by or serving as a member of an emergency medical service, a hospital, or a health clinic licensed by the department.

(2) An out-of-hospital emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act or as authorized pursuant to the EMS Personnel Licensure Interstate Compact.

(3) For purposes of this section, licensed health care practitioner means (a) a physician medical director or physician surrogate for purposes of supervision of an out-of-hospital 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 out-of-hospital emergency care provider

for a hospital or health clinic. A registered nurse may direct an out-of-hospital emergency care provider in a hospital or health clinic.

**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.

Effective date July 19, 2018.

**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 out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 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 out-of-hospital emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or out-of-hospital emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

**Source:** Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509; Laws 2018, LB1034, § 26.

Effective date July 19, 2018.

**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.

Effective date July 19, 2018.

**38-1232 Individual liability.**

(1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her licensure, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (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.

Effective date July 19, 2018.

**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 out-of-hospital emergency care provider, to use any other term to indicate or imply that he or she is an out-of-hospital emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of out-of-hospital emergency care providers unless the training agency is approved pursuant to rules and regulations of the 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.

Effective date July 19, 2018.

**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.



Section

- 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

38-1711. Massage therapy; temporary license; requirements; applicability of section.

38-1712. Reciprocity; military spouse; temporary license.

#### **38-1711 Massage therapy; temporary license; requirements; applicability of section.**

(1) A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

**Source:** Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618; Laws 2017, LB88, § 57.

#### **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.

## ARTICLE 18

### MEDICAL NUTRITION THERAPY PRACTICE ACT

#### Section

38-1814. Reciprocity; military spouse; temporary license.

**38-1814 Reciprocity; military spouse; temporary license.**

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

**Source:** Laws 2007, LB463, § 636; Laws 2017, LB88, § 59.

**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.
- 38-2025. 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.
- 38-2049. Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.
- 38-2058. Acupuncture; license required; standard of care.
- 38-2063. Physician or physician assistant; telehealth; prescribe drug.

#### **38-2001 Act, how cited.**

Sections 38-2001 to 38-2063 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.  
Effective date July 19, 2018.

#### **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; and

(21) 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. Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

**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 ap-

proved 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.

**38-2049 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.

**38-2058 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 Physician or physician assistant; telehealth; prescribe drug.**

(1) A physician or physician assistant may establish a provider-patient relationship through telehealth.

(2) A licensed physician or licensed physician assistant who is providing a telehealth service to a patient may prescribe the patient a drug if the licensed physician or licensed physician assistant is authorized to prescribe.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

**Source:** Laws 2018, LB701, § 6.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

#### **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. Effective date July 19, 2018.

#### 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. Effective date July 19, 2018.

### **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.  
Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

## 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.  
Effective date July 19, 2018.

**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, LB 463, § 772; Laws 2017, LB 88, § 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, LB 463, § 776; Laws 2017, LB 88, § 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.  
Effective date July 19, 2018.

**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. Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

**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.
- 38-2821.01. Equivalent, defined.
- 38-2823.01. Generic name, defined.
- 38-2825.02. Interchangeable biological product, 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.
- 38-2847. 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.
- 38-2892. Pharmacy technicians; responsibility for supervision and performance.
- 38-2897. Duty to report impaired practitioner; immunity.
- 38-28,106. Communication of prescription, chart order, or refill authorization; limitation.
- 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.

## Section

- 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.  
Operative date July 19, 2018.

**Cross References**

Nebraska Drug Product Selection Act, see section 38-28,108.

**38-2802 Definitions, where found.**

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

**Source:** Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30; Laws 2017, LB166, § 10; Laws 2017, LB481, § 2; Laws 2018, LB731, § 68.  
Operative date July 19, 2018.

**38-2807.01 Bioequivalent, defined.**

Bioequivalent means drug products: (1) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (2) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (3) that comply with compendial standards and are consistent from lot to lot with respect to (a) purity of ingredients, (b) weight variation, (c) uniformity of content, and (d) stability; and (4) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist.

**Source:** Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232; R.S.1943, (2009), § 71-5402; Laws 2015, LB37, § 61; R.S.1943, (2016), § 38-28,110; Laws 2017, LB481, § 3.

**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.

**38-2826.01 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.

Effective date July 19, 2018.

**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.

Operative date July 19, 2018.

**38-2836.01 Practice agreement, defined.**

Practice agreement means a document signed by a pharmacist and a practitioner with independent prescribing authority, in which the pharmacist agrees to design, implement, and monitor a therapeutic plan based on a written protocol.

**Source:** Laws 2017, LB166, § 11.

**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.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**38-2843.04 Supervising pharmacy, defined.**

Supervising pharmacy has the same meaning as in section 71-427.04.

**Source:** Laws 2018, LB731, § 72.

Operative date July 19, 2018.

**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.

Operative date July 19, 2018.

**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.  
Operative date July 19, 2018.

### **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.  
Operative date July 19, 2018.

#### Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

### **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.  
Operative date July 19, 2018.

#### Cross References

Automated Medication Systems Act, see section 71-2444.

### **38-2897 Duty to report impaired practitioner; immunity.**

(1) The requirement to file a report under subsection (1) of section 38-1,125 shall not apply to pharmacist interns or pharmacy technicians, except that a

pharmacy technician shall, within thirty days after having first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs, report to the department in such manner and form as the department may require. A report made to the department under this section shall be confidential. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

(2) A pharmacy technician making a report to the department under this section, except for self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted under this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in this section shall be sufficient to satisfy the credential holder's reporting requirement under this section.

(4) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under this section. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee.

(5) Documents from original sources shall not be construed as immune from discovery or use in actions under this section.

**Source:** Laws 2007, LB236, § 38; R.S.Supp.,2007, § 71-1,147.72; Laws 2017, LB166, § 18.

#### 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.  
Operative date July 19, 2018.

### **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 pre-

scribed 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 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.  
Effective date July 19, 2018.

**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.  
Effective date July 19, 2018.

#### 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.  
Effective date July 19, 2018.

#### 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. Operative date July 19, 2018.

**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.  
 Effective date July 19, 2018.

##### **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.  
 Effective date July 19, 2018.

##### **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.  
 Effective date July 19, 2018.

##### **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.  
 Effective date July 19, 2018.



**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.

Effective date July 19, 2018.

**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.

## Section

- 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.  
Effective date July 19, 2018.

#### Cross References

Emergency Management Assistance Compact, see section 1-124, Vol. 2A, Appendix.

### 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 interjurisdic-

tional 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 interjurisdictional 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.  
Effective date July 19, 2018.

### 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.  
Operative date July 19, 2018.

## CHAPTER 39

### HIGHWAYS AND BRIDGES

Article.

1. General Highway Provisions. 39-102, 39-103.
2. Signs. 39-202 to 39-225.
3. Miscellaneous Penalty Provisions. 39-308 to 39-312.
8. Bridges.
  - (a) Miscellaneous Provisions. 39-805.
  - (b) Contracts for Construction and Repair of Bridges. 39-810 to 39-826.02.
  - (g) State Aid Bridges. 39-847, 39-847.01.
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10. Rural Mail Routes. 39-1010, 39-1011.
11. State Highway Commission. 39-1101, 39-1110.
13. State Highways.
  - (a) Intent, Definitions, and Rules. 39-1301, 39-1302.
  - (b) Intergovernmental Relations. 39-1306.01 to 39-1306.03.
  - (c) Designation of System. 39-1309 to 39-1314.
  - (e) Land Acquisition. 39-1320, 39-1323.01.
  - (f) Control of Access. 39-1328.01, 39-1328.02.
  - (g) Construction and Maintenance. 39-1345.01.
  - (h) Contracts. 39-1350, 39-1353.
  - (j) Miscellaneous. 39-1359.01 to 39-1365.02.
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14. County Roads. General Provisions. 39-1407 to 39-1412.
15. County Roads. Organization and Administration.
  - (a) County Highway Board. 39-1503.
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16. County Roads. Road Improvement Districts.
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18. County Roads. Maintenance. 39-1804, 39-1811.
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20. County Road Classification. 39-2001, 39-2002.
21. Functional Classification. 39-2103 to 39-2124.
22. Nebraska Highway Bonds. 39-2215, 39-2224.
23. County Highway and City Street Superintendents Act. 39-2305 to 39-2310.
25. Distribution to Political Subdivisions.
  - (a) Roads. 39-2504 to 39-2508.
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26. Junkyards. 39-2602.
27. Build Nebraska Act. 39-2702.
28. Transportation Innovation Act. 39-2802, 39-2806.

#### ARTICLE 1

#### GENERAL HIGHWAY PROVISIONS

Section

- 39-102. Rules and regulations; promulgated by Department of Transportation to promote public safety.
- 39-103. Department of Transportation; rules and regulations; violation; penalty.

**39-102 Rules and regulations; promulgated by Department of Transportation to promote public safety.**

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Transportation may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

**Source:** Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17; Laws 2017, LB339, § 83.

## Cross References

Nebraska Rules of the Road, see section 60-601.

**39-103 Department of Transportation; rules and regulations; violation; penalty.**

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Transportation governing the use of state highways shall be guilty of a Class III misdemeanor.

**Source:** Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18; Laws 2017, LB339, § 84.

**ARTICLE 2**

**SIGNS**

Section

- 39-202. Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.
- 39-203. Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.
- 39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.
- 39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.
- 39-206. Informational signs; erection; conditions; fee.
- 39-207. Tourist-oriented directional sign panels; erection and maintenance.
- 39-208. Sign panels; erection; conditions; fee; disposition.
- 39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.
- 39-211. Sign panels; rules and regulations.
- 39-212. Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.
- 39-213. Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.
- 39-214. Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.
- 39-216. Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.
- 39-217. Scenic byway designations.
- 39-218. Scenic byways; prohibition of signs visible from main-traveled way; exceptions.
- 39-219. Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.
- 39-220. Control of advertising visible from main-traveled way; permit; rules and regulations.
- 39-221. Control of advertising outside of right-of-way; compliance; damages; violations; penalty.
- 39-222. Control of advertising outside of right-of-way; eminent domain; authorized.
- 39-223. Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.
- 39-224. Department of Transportation; retention of signs, displays, or devices; request.
- 39-225. Department of Transportation; removal of nonconforming signs; program.

**39-202 Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.**

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of

Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Transportation as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

**Source:** Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2; Laws 2017, LB339, § 85.

**39-203 Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.**

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Transportation shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

**Source:** Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3; Laws 2017, LB339, § 86.

**39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.**

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Transportation and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

**Source:** Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1; Laws 2017, LB339, § 87.

**39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.**

(1) Applicants for business signs shall furnish business signs to the Department of Transportation and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information

sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

**Source:** Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2; Laws 2017, LB339, § 88.

### **39-206 Informational signs; erection; conditions; fee.**

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

(1) No state funds shall be used for the erection, maintenance, or servicing of such signs;

(2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Transportation;

(3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and

(4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels. If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

**Source:** Laws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24; Laws 2017, LB339, § 89.

### **39-207 Tourist-oriented directional sign panels; erection and maintenance.**



Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Transportation within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

(1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and

(2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

**Source:** Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1; Laws 2017, LB113, § 39; Laws 2017, LB339, § 90.

### **39-208 Sign panels; erection; conditions; fee; disposition.**

(1) The Department of Transportation shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

(a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;

(b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;

(c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;

(d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

**Source:** Laws 1993, LB 108, § 2; Laws 2017, LB339, § 91.

### **39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.**

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by

law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Transportation assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

**Source:** Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3; Laws 2017, LB339, § 92.

### **39-211 Sign panels; rules and regulations.**

The Department of Transportation shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

**Source:** Laws 1993, LB 108, § 5; Laws 2017, LB339, § 93.

### **39-212 Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.**

(1) The Department of Transportation may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of

disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

**Source:** Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp.,1994, § 39-1320.01; Laws 1995, LB 264, § 6; Laws 2017, LB339, § 94.

**39-213 Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.**

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Nebraska Department of Transportation, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be penalized by the provisions of subsection (b) thereof, and that the Nebraska Department of Transportation shall be and is hereby empowered and directed to make rules and regulations in accord with

the agreement between the Nebraska Department of Transportation and the United States Department of Transportation dated October 29, 1968.

**Source:** Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7; Laws 2017, LB339, § 95.

**39-214 Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.**

Whenever advertising rights are acquired by the Department of Transportation pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the department to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

**Source:** Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8; Laws 2017, LB339, § 96.

**39-216 Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.**

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Transportation authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

**Source:** Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10; Laws 2017, LB339, § 97.

**39-217 Scenic byway designations.**

(1) The Department of Transportation may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archaeological features which support designation of the route as a scenic byway.

**Source:** Laws 1995, LB 264, § 11; Laws 2017, LB339, § 98.

**39-218 Scenic byways; prohibition of signs visible from main-traveled way; exceptions.**

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Transportation.

**Source:** Laws 1995, LB 264, § 12; Laws 2017, LB339, § 99.

**39-219 Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.**

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Transportation.

**Source:** Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp.,1994, § 39-1320.08; Laws 1995, LB 264, § 13; Laws 2017, LB339, § 100.

**39-220 Control of advertising visible from main-traveled way; permit; rules and regulations.**

The Department of Transportation may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon the Highway Beautification Control System or which are at any point visible from the main-traveled way of the Highway Beautification Control System, except for on-premise signs, displays, and devices, as defined in the department's rules and regulations, for advertising activities conducted on the property on which the sign, display, or device is located. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department shall adopt and promulgate rules and regulations to implement and administer sections 39-212 to 39-226. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

**Source:** Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14; Laws 2017, LB339, § 101; Laws 2018, LB472, § 1.  
Effective date July 19, 2018.

**39-221 Control of advertising outside of right-of-way; compliance; damages; violations; penalty.**

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition to any other available remedies, the Director-State Engineer, for the Department of Transportation and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

**Source:** Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15; Laws 2017, LB339, § 102.

**39-222 Control of advertising outside of right-of-way; eminent domain; authorized.**

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Transportation from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

**Source:** Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16; Laws 2017, LB339, § 103.

**39-223 Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.**

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Transportation for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Transportation is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

**Source:** Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17; Laws 2017, LB339, § 104.

**39-224 Department of Transportation; retention of signs, displays, or devices; request.**

Upon receipt of a petition under section 39-223, the Nebraska Department of Transportation shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices

which provide information for the specific economic area responsible for the petition.

**Source:** Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18; Laws 2017, LB339, § 105.

**39-225 Department of Transportation; removal of nonconforming signs; program.**

The Department of Transportation shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

**Source:** Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19; Laws 2017, LB339, § 106.

### ARTICLE 3

#### MISCELLANEOUS PENALTY PROVISIONS

##### Section

39-308. Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.

39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.

39-312. Camping; permitted; where; violation; penalty.

**39-308 Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.**

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Transportation or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

**Source:** Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32; Laws 2017, LB339, § 107.

**39-311 Rubbish on highways; prohibited; signs; enforcement; violation; penalties.**

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Transportation or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

**Source:** Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403; Laws 2017, LB339, § 108.

#### Cross References

**Littering**, penalty, see section 28-523.

### **39-312 Camping; permitted; where; violation; penalty.**

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Transportation or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

**Source:** Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404; Laws 2017, LB339, § 109.



## ARTICLE 8

## BRIDGES

## (a) MISCELLANEOUS PROVISIONS

## Section

39-805. Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

## (b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

39-822. Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.

39-826.01. Proposed bridge or culvert; dam in lieu of; how determined.

39-826.02. Proposed bridge or culvert; natural resources district; dam; feasibility study.

## (g) STATE AID BRIDGES

39-847. State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

39-847.01. State Aid Bridge Fund; State Treasurer; transfer funds to.

## (k) INTERSTATE BRIDGE ACT OF 1959

39-891. Interstate bridges; declaration of purpose.

39-892. Interstate bridges; terms, defined.

39-893. Act; applicability.

## (a) MISCELLANEOUS PROVISIONS

**39-805 Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.**

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district, it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to such matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain the bridges and approaches. Where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm, or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm, or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at the expense of such person, firm, or corporation, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm, or corporation under the provisions of this section shall be constructed under the supervision of the Department of Transportation, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

**Source:** Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821; R.S.1943, § 39-805; Laws 2017, LB339, § 110.

## Cross References

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

## (b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

**39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.**

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

**Source:** Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1; Laws 2017, LB86, § 1.

## Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

**39-822 Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.**

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section 39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk such plans and specifications. The county boards of the several counties shall prepare and transmit to the Department of Transportation a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the provisions of such sections, and state therein whether they were built under a contract or by the county.

**Source:** Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814; R.S.1943, § 39-822; Laws 2017, LB339, § 111.

#### **39-826.01 Proposed bridge or culvert; dam in lieu of; how determined.**

The Department of Transportation or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the department or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the department or the county board and the natural resources district cannot agree regarding the feasibility of a dam, the decision of the department, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

**Source:** Laws 1979, LB 213, § 1; Laws 2017, LB339, § 112.

#### **39-826.02 Proposed bridge or culvert; natural resources district; dam; feasibility study.**

If a natural resources district shall receive notice of a proposed bridge or culvert pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Transportation or the county board and shall, if the district favors such a dam, assist in the joint feasibility study and provide any other assistance which may be required.

**Source:** Laws 1979, LB 213, § 2; Laws 2017, LB339, § 113.

## (g) STATE AID BRIDGES

**39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.**

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall, in June and December of each year, consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

**Source:** Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB339, § 114.

**39-847.01 State Aid Bridge Fund; State Treasurer; transfer funds to.**

The State Treasurer shall transfer monthly thirty-two thousand dollars from the share of the Department of Transportation of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

**Source:** Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4; Laws 2017, LB339, § 115.

## Cross References

Highway Trust Fund, see section 39-2215.

## (k) INTERSTATE BRIDGE ACT OF 1959

**39-891 Interstate bridges; declaration of purpose.**

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not and cannot be the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and 39-1393, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, but it is intended that the department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the department to enter into agreements with adjoining states, as granted in the act, is therefor essential.

The Legislature hereby determines and declares that the provisions of the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

**Source:** Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1; Laws 2016, LB1038, § 5; Laws 2017, LB271, § 1.

**39-892 Interstate bridges; terms, defined.**

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Transportation;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

(11) Highway shall mean a road, street, expressway, or freeway, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

**Source:** Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38; Laws 2017, LB339, § 116.

**39-893 Act; applicability.**

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and 39-1393.

**Source:** Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2; Laws 2016, LB1038, § 6; Laws 2017, LB271, § 2.

**ARTICLE 10****RURAL MAIL ROUTES**

Section

39-1010. Mailboxes; location; violation; duty of Department of Transportation.

39-1011. Mailboxes; Department of Transportation; turnouts; provide.

**39-1010 Mailboxes; location; violation; duty of Department of Transportation.**

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder width of less than six feet, the Department of Transportation shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the department may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the department to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

**Source:** Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB757, § 1; Laws 2017, LB339, § 117.

**39-1011 Mailboxes; Department of Transportation; turnouts; provide.**

The Department of Transportation shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with section 39-1010.

**Source:** Laws 1961, c. 194, § 2, p. 593; Laws 2017, LB339, § 118.



## ARTICLE 11

## STATE HIGHWAY COMMISSION

## Section

39-1101. State Highway Commission; creation; members.

39-1110. State Highway Commission; powers and duties.

**39-1101 State Highway Commission; creation; members.**

There is hereby created in the Department of Transportation a State Highway Commission which shall consist of eight members to be appointed by the Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

**Source:** Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1; Laws 2017, LB339, § 119.

**39-1110 State Highway Commission; powers and duties.**

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Transportation;

(b) To advise the public regarding the policies, conditions, and activities of the department;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the fragment of a route, section of a route, or a route should be relinquished or

abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the department, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the department shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

**Source:** Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4; Laws 2017, LB339, § 120.

Cross References

Nebraska Highway Bond Act, see section 39-2222.

**ARTICLE 13  
STATE HIGHWAYS**

(a) INTENT, DEFINITIONS, AND RULES

Section

- 39-1301. State highways; declaration of legislative intent.
- 39-1302. Terms, defined.

(b) INTERGOVERNMENTAL RELATIONS

- 39-1306.01. Federal aid; political subdivisions; department; unused funds; allocation.
- 39-1306.02. Federal aid; political subdivisions; allotment; department; duration; notice.
- 39-1306.03. United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.

(c) DESIGNATION OF SYSTEM

- 39-1309. State highway system; designation; redesignation; factors.
- 39-1311. State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.
- 39-1314. State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure; memorandum of understanding; contents.

(e) LAND ACQUISITION

- 39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.
- 39-1323.01. Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.

(f) CONTROL OF ACCESS

- 39-1328.01. State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.

## Section

- 39-1328.02. State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

## (g) CONSTRUCTION AND MAINTENANCE

- 39-1345.01. State highways; public use while under construction, repair, or maintenance; contractor; liability.

## (h) CONTRACTS

- 39-1350. Bids; contracts; department powers; department authorized to act for political subdivision.  
39-1353. Construction contracts; proposal forms; issuance to certain bidders.

## (j) MISCELLANEOUS

- 39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.  
39-1363. Preservation of historical, archaeological, and paleontological remains; agreements; funds; payment.  
39-1364. Plans, specifications, and records of highway projects; available to public, when.  
39-1365.01. State highway system; plans; department; duties; priorities.  
39-1365.02. State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

## (l) STATE RECREATION ROADS

- 39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.  
39-1392. Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.

## (a) INTENT, DEFINITIONS, AND RULES

**39-1301 State highways; declaration of legislative intent.**

Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, result in low cost of motor vehicle operation, protect the health and safety of the citizens of the state, increase property values, and generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by sections 39-1301 to 39-1362 and 39-1393, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of

authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of such sections, to designate the Director-State Engineer and the department, acting under the direction of the Director-State Engineer, as direct custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority granted in sections 39-1301 to 39-1362 and 39-1393 to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

**Source:** Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3; Laws 2016, LB1038, § 7; Laws 2017, LB271, § 3.

### **39-1302 Terms, defined.**

For purposes of sections 39-1301 to 39-1393, unless the context otherwise requires:

(1) Abandon shall mean to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley shall mean an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Approach or exit road shall mean any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress;

(4) Arterial highway shall mean a highway primarily for through traffic, usually on a continuous route;

(5) Beltway shall mean the roads and streets not designated as a part of the state highway system and that are under the primary authority of a county or municipality, if the location of the beltway has been approved by (a) record of decision or finding of no significant impact and (b) the applicable local planning authority as a part of the comprehensive plan;

(6) Business shall mean any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property or for the sale of services to the public or by a nonprofit corporation;

(7) Channel shall mean a natural or artificial watercourse;

(8) Commercial activity shall mean those activities generally recognized as commercial by zoning authorities in this state, and industrial activity shall mean those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(9) Connecting link shall mean the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(10) Controlled-access facility shall mean a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(11) Department shall mean the Department of Transportation;

(12) Displaced person shall mean any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(13) Easement shall mean a right acquired by public authority to use or control property for a designated highway purpose;

(14) Expressway shall mean a divided arterial highway for through traffic with full or partial control of access which may have grade separations at intersections;

(15) Family shall mean two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship;

(16) Farm operation shall mean any activity conducted primarily for the production of one or more agricultural products or commodities for sale and

home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(17) Federal-aid primary roads shall mean roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the Nebraska Department of Transportation and approved by the United States Secretary of Transportation and shown on the maps provided for in section 39-1311;

(18) Freeway shall mean an expressway with full control of access;

(19) Frontage road shall mean a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(20) Full control of access shall mean that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections;

(21) Grade separation shall mean a crossing of two highways at different levels;

(22) Highway shall mean a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(23) Individual shall mean a person who is not a member of a family;

(24) Interchange shall mean a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection;

(25) Map shall mean a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(26) Mileage shall mean the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(27) Parking lane shall mean an auxiliary lane primarily for the parking of vehicles;

(28) Parkway shall mean an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(29) Relinquish shall mean to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(30) Right of access shall mean the rights of ingress and egress to or from a road, street, or highway and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(31) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(32) Road shall mean a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(33) Roadside shall mean the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(34) Roadway shall mean the portion of a highway, including shoulders, for vehicular use;

(35) Separation structure shall mean that part of any bridge or road which is directly overhead of the roadway of any part of a highway;

(36) State highway purposes shall have the meaning set forth in subsection (2) of section 39-1320;

(37) State highway system shall mean the roads, streets, and highways shown on the map provided for in section 39-1311 as forming a group of highway transportation lines for which the Nebraska Department of Transportation shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(38) Street shall mean a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(39) Structure shall mean anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(40) Title shall mean the evidence of a person's right to property or the right itself;

(41) Traveled way shall mean the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(42) Unzoned commercial or industrial area for purposes of control of outdoor advertising shall mean all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(43) Visible, for purposes of section 39-1320, in reference to advertising signs, displays, or devices, shall mean the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read;

(44) Written instrument shall mean a deed or any other document that states a contract, agreement, gift, or transfer of property; and

(45) Zoned commercial or industrial areas shall mean those areas within six hundred sixty feet of the nearest edge of the right-of-way of the Highway Beautification Control System defined in section 39-201.01, zoned by state or local zoning authorities for industrial or commercial activities.

**Source:** Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983, LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1; Laws 2016, LB1038, § 8; Laws 2017, LB271, § 4; Laws 2017, LB339, § 121.

#### (b) INTERGOVERNMENTAL RELATIONS

##### **39-1306.01 Federal aid; political subdivisions; department; unused funds; allocation.**

Unused funds shall be made available by the department to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

**Source:** Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185; Laws 2017, LB339, § 122.

##### **39-1306.02 Federal aid; political subdivisions; allotment; department; duration; notice.**

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the department shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

**Source:** Laws 1969, c. 330, § 2, p. 1185; Laws 2017, LB339, § 123.

##### **39-1306.03 United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.**



(1) The department may assume, pursuant to 23 U.S.C. 326, all or part of the responsibilities of the United States Department of Transportation:

(a) For determining whether federal-aid design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and

(b) For environmental review, consultation, or other related actions required under any federal law applicable to activities that are classified as categorical exclusions.

(2) The department may assume, pursuant to 23 U.S.C. 327, all or part of the responsibilities of the United States Department of Transportation:

(a)(i) With respect to one or more highway projects within the state, under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; and

(ii) For environmental review, consultation, or other action required under any federal environmental law pertaining to the review or approval of a specific project; and

(b) With respect to one or more railroad, public transportation, or multimodal projects within the state under the National Environmental Policy Act of 1969, as amended.

(3) The department may enter into one or more agreements with the United States Secretary of Transportation, including memoranda of understanding, in furtherance of the assumption by the department of duties under 23 U.S.C. 326 and 327.

(4) The State of Nebraska hereby waives its immunity from civil liability, including immunity from suit in federal court under the Eleventh Amendment to the United States Constitution, and consents to the jurisdiction of the federal courts solely for the compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327, in accordance with the same procedural and substantive requirements applicable to a suit against a federal agency. This waiver of immunity shall only be valid if:

(a) The department executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. 326(c) and 327(c);

(b) The act or omission that is the subject of the lawsuit arises out of compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327; and

(c) The memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

(5) The department may adopt and promulgate rules and regulations to implement this section and may adopt relevant federal environmental standards as the standards for the department.

**Source:** Laws 2017, LB271, § 5.

### (c) DESIGNATION OF SYSTEM

#### **39-1309 State highway system; designation; redesignation; factors.**

(1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and

referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September 18, 1955, except that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250 and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 and 39-1393 shall be a part of the county road system, and the title to the right-of-way of such roads shall vest in the counties in which the roads are located.

**Source:** Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6; Laws 2016, LB1038, § 9; Laws 2017, LB271, § 6.

**39-1311 State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.**

(1) The department at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

**Source:** Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2; Laws 2017, LB339, § 124.

**39-1314 State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure; memorandum of understanding; contents.**

No fragment or section of a route nor any route on the state highway system shall be abandoned without first offering to relinquish such fragment, section, or route to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned. The department shall offer to relinquish such fragment, section, or route by written notification to such political or governmental subdivisions or public corporations of the department's offer to relinquish. Four months after sending the notice of offer to relinquish, the department may proceed to abandon such fragment, section, or route on the state highway system unless a petition from a notified political or governmental subdivision or public corporation has been filed with the department, prior to abandonment, setting forth that the political or governmental subdivision or public corporation desires to maintain such fragment, section, route, or portion thereof. After the filing of such petition, the department and political or governmental subdivision or public corporation may negotiate the terms or conditions of any relinquishment, including any reservation of rights by either party, except that any rights and conditions asserted by the department as existing at the time of right-of-way acquisition or stipulated to as a requirement for federal funding of project development and construction shall not be negotiable. The petition and a written memorandum of understanding executed by the department and the political or governmental subdivision or public corporation, together with a written instrument describing the proposed relinquishment, shall be filed as a public record in the department. The memorandum of understanding shall detail the reservation of rights made by either party, including any restrictions upon any future use of the fragment, section, or route to be relinquished, and shall also state the right of the political or governmental subdivision or public corporation to petition the department to seek renegotiation of the terms and conditions of the relinquishment at a future date. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and

state the terms or conditions, if any pursuant to the memorandum of understanding, upon which the relinquishment shall be qualified. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of the county where the portion of the state highway system is being relinquished. No fee shall be charged for such recording. After such recording, the fragment, section, route, or portion relinquished will be the responsibility of such political or governmental subdivision or public corporation, subject to any mutually agreed terms or conditions. At any time after the relinquishment, the political or governmental subdivision or public corporation may, upon a showing of a change in financial or other circumstances or for economic development purposes, petition the department to renegotiate the agreed terms or conditions of the relinquishment or revert to abandonment. If the department agrees to new terms or conditions, it shall file an amended memorandum of understanding executed by the department and the political or governmental subdivision or public corporation and certify and record an amended written instrument with the register of deeds.

**Source:** Laws 1955, c. 148, § 14, p. 423; Laws 2018, LB78, § 1.  
Effective date July 19, 2018.

#### (e) LAND ACQUISITION

##### **39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.**

(1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and 39-1393, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan as required by sections 39-2115 to 39-2117, an annual plan under section 39-2119, or an annual metropolitan transportation improvement program under section 39-2119.01 in effect upon acquisition of the lands. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(c).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

**Source:** Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1; Laws 2016, LB1038, § 10; Laws 2017, LB271, § 7; Laws 2017, LB339, § 125.

#### Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.

Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

**39-1323.01 Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.**

The Nebraska Department of Transportation, subject to the approval of the Governor, and the United States Department of Transportation if such depart-

ment has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which area or land was acquired for highway purposes. The Director-State Engineer, for the Nebraska Department of Transportation, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

**Source:** Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5; Laws 2017, LB339, § 126.

#### (f) CONTROL OF ACCESS

**39-1328.01 State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.**

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, is relocated and is made a controlled-access facility, and the department is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, by the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

**Source:** Laws 1965, c. 211, § 1, p. 619; Laws 2017, LB113, § 40; Laws 2017, LB339, § 127.

**39-1328.02 State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.**

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the department has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions. The municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

**Source:** Laws 1965, c. 211, § 2, p. 620; Laws 2017, LB339, § 128.

**(g) CONSTRUCTION AND MAINTENANCE****39-1345.01 State highways; public use while under construction, repair, or maintenance; contractor; liability.**

Whenever the department, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

**Source:** Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11; Laws 2017, LB339, § 129.

**(h) CONTRACTS****39-1350 Bids; contracts; department powers; department authorized to act for political subdivision.**

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking

bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

**Source:** Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB312, § 3; Laws 2017, LB339, § 130.

**39-1353 Construction contracts; proposal forms; issuance to certain bidders.**

(1) Proposal forms for submitting bids on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall be issued by the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such proposal forms shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

**Source:** Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6; Laws 2017, LB339, § 131.

(j) MISCELLANEOUS

**39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.**

For purposes of this section, the definitions in section 39-1302 apply.

The department shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2007, LB43, § 1; Laws 2014, LB698, § 1; Laws 2017, LB339, § 132.



**39-1363 Preservation of historical, archaeological, and paleontological remains; agreements; funds; payment.**

To more effectually preserve the historical, archaeological, and paleontological remains of the state, the department is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archaeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

**Source:** Laws 1959, c. 178, § 1, p. 649; Laws 2017, LB339, § 133.

**39-1364 Plans, specifications, and records of highway projects; available to public, when.**

The department shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project, except that any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the department will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

**Source:** Laws 1959, c. 179, § 1, p. 650; Laws 2017, LB339, § 134.

**39-1365.01 State highway system; plans; department; duties; priorities.**

The department shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

**Source:** Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1; Laws 2017, LB339, § 135.

**39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.**

(1) The department shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The department shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system, the department's planning procedures, and the progress being made on the expressway system. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth;

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs;

(f) A review of the progress being made toward completion of the expressway system, as such system was designated on January 1, 2016, and whether such work is on pace for completion prior to June 30, 2033;

(g) A review of the Transportation Infrastructure Bank Fund and the fund's component programs under sections 39-2803 to 39-2807. This review shall include a listing of projects funded and planned to be funded under each of the three component programs; and

(h) A review of the outcomes of the Economic Opportunity Program, including the growth in permanent jobs and related income and the net increase in overall business activity.

**Source:** Laws 1988, LB 632, § 25; Laws 2012, LB782, § 40; Laws 2016, LB960, § 27; Laws 2017, LB339, § 136.

### (I) STATE RECREATION ROADS

**39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.**

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the department and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or

other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the department and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15; Laws 2015, LB661, § 30; Laws 2017, LB339, § 137.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **39-1392 Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.**

The department shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and improvement accomplished during each of the two immediately preceding calendar years.

**Source:** Laws 1973, LB 374, § 2; Laws 2012, LB782, § 42; Laws 2017, LB339, § 138.

## **ARTICLE 14**

### **COUNTY ROADS. GENERAL PROVISIONS**

#### Section

- 39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.  
39-1411. Road and bridge records, who must keep; carrying capacity posted on bridges.

## Section

39-1412. County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.

**39-1407 County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.**

Whenever contracts are to be let for road improvements, it shall be the duty of the county board to cause to be prepared and filed with the county clerk an estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Transportation to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

**Source:** Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2; Laws 2017, LB339, § 139.

**39-1411 Road and bridge records, who must keep; carrying capacity posted on bridges.**

The county highway superintendent or some other qualified person designated by the county board shall keep in his or her office a road record which shall include a record of the proceedings in regard to the laying out, establishing, changing, or discontinuing of all roads in the county hereafter established, changed, or discontinued, and a record of the cost and maintenance of all such roads. Such person shall record in the bridge record a record of all county bridges and culverts showing number, location, and description of each, and a record of the cost of construction and maintenance of all such bridges and culverts. If the carrying capacity or weight limit of any bridge is less than the limits set forth in subsections (2), (3), and (4) of section 60-6,294, the county shall cause to be firmly posted or attached upon such bridge in a conspicuous place at each end thereof a board or metal sign showing the carrying capacity or weight which the bridge will safely carry or bear.

**Source:** Laws 1957, c. 155, art. I, § 11, p. 511; Laws 2018, LB310, § 1.  
Effective date July 19, 2018.

**Cross References**

Road record, duties of county clerk, see section 23-1305.

**39-1412 County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.**

(1) No person shall drive across or go upon any county bridge with a greater weight than the limits set forth in subsections (2), (3), and (4) of section 60-6,294 or the carrying capacity or weight posted or attached pursuant to section 39-1411.

(2) A person who violates this section shall recover no damages from the county for any accident or injury which may happen to him or her upon such bridge because of damage to or the failure of such bridge caused by such violation.

(3) A person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1957, c. 155, art. I, § 12, p. 512; Laws 1977, LB 40, § 214; Laws 2018, LB310, § 2.  
Effective date July 19, 2018.

**ARTICLE 15**

**COUNTY ROADS. ORGANIZATION AND ADMINISTRATION**

(a) COUNTY HIGHWAY BOARD

Section

39-1503. Highway superintendent or road unit system counties; county boards; duties.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506. County highway superintendent; qualifications.

(a) COUNTY HIGHWAY BOARD

**39-1503 Highway superintendent or road unit system counties; county boards; duties.**

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Transportation takes bids on behalf of the county, the county shall have authority to permit

such bids to be taken and let at the offices of the department in Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

**Source:** Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28; Laws 2017, LB339, § 140.

(b) COUNTY HIGHWAY SUPERINTENDENT

**39-1506 County highway superintendent; qualifications.**

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except that no member of the county board shall be eligible for appointment. In counties having a population of sixty thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent. In counties having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

**Source:** Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3; Laws 2017, LB200, § 4.

**ARTICLE 16**

**COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS**

(a) SPECIAL IMPROVEMENT DISTRICTS

Section

- 39-1635. Annexation of territory by a city or village; effect on certain contracts.
- 39-1635.01. Annexation; trustees; accounting; effect.
- 39-1635.02. Annexation; when effective; trustees; duties; special assessments prohibited.
- 39-1635.03. Annexation; obligations and assessments; agreement to divide; approval; decree.

(a) SPECIAL IMPROVEMENT DISTRICTS

**39-1635 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 road improvement district organized under sections 39-1601 to 39-1636.01, 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, relieved, 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.

**Source:** Laws 2018, LB130, § 10.  
Effective date July 19, 2018.

**39-1635.01 Annexation; trustees; accounting; effect.**

The trustees of a road 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 of the district for an accounting or for damages for breach of duty, the trustees 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 of the road improvement district in connection with such suit and a reasonable attorney's fee for the trustees' 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 shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees to levy any special assessments after the effective date of the merger.

**Source:** Laws 2018, LB130, § 11.  
Effective date July 19, 2018.

**39-1635.02 Annexation; when effective; trustees; duties; special assessments prohibited.**

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the road 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 of the road 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 2018, LB130, § 12.  
Effective date July 19, 2018.

**39-1635.03 Annexation; obligations and assessments; agreement to divide; approval; decree.**

If only a part of the territory within any road improvement district is annexed by a city or village, the road improvement district acting through its trustees 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 39-1635 to 39-1635.02 when the city or village annexes the entire territory within the district, and the trustees shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 39-1635.01. 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.

**Source:** Laws 2018, LB130, § 13.

Effective date July 19, 2018.

## **ARTICLE 17**

### **COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATION, VACATION, AND ABANDONMENT**

#### (a) LAND ACQUISITION

Section

39-1703. State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.

#### (b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1713. Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.



## (a) LAND ACQUISITION

**39-1703 State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.**

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any such purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Transportation and be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds and shall be remitted by that board to the State Treasurer for credit to the proper account.

**Source:** Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149; Laws 2017, LB339, § 141.

## (b) ESTABLISHMENT, ALTERATION, AND SURVEY

**39-1713 Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.**

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

**Source:** Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4; Laws 2017, LB339, § 142.

## ARTICLE 18

## COUNTY ROADS. MAINTENANCE

## Section

- 39-1804. Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.
- 39-1811. Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

**39-1804 Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.**

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare, the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

**Source:** Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10; Laws 2017, LB113, § 41.

**39-1811 Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.**

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, sometime in July for the first time and sometime in September for the second time.

(2) This section shall not restrict landowners, a county, or a township from management of (a) roadside vegetation on road shoulders or of sight distances at intersections and entrances at any time of the year or (b) snow control mowing as may be necessary.

(3) Except as provided in subsection (2) of this section, no person employed by or under contract with a county or township to mow roadside ditches shall do such mowing before July 1 of any year.

(4) Whenever a landowner, referred to in subsections (1) and (5) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(5) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (4) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

**Source:** Laws 1957, c. 155, art. V, § 11, p. 555; Laws 2017, LB584, § 1.

**ARTICLE 19**

**COUNTY ROADS. ROAD FINANCES**

Section  
39-1901. Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant’s petition.

**39-1901 Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant’s petition.**

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located, except that the Department of Transportation shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages, the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

**Source:** Laws 1957, c. 155, art. VI, § 1, p. 558; Laws 2017, LB339, § 143.

**ARTICLE 20**

**COUNTY ROAD CLASSIFICATION**

Section  
39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.  
39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

**39-2001 Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.**

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as

primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main-traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of the map and of the date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads, setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads. If no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward the map, together with all petitions and plats, to the Department of Transportation.

(5) The department shall, upon receipt of the maps, petitions, and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

**Source:** Laws 1957, c. 155, art. VII, § 1, p. 560; Laws 2017, LB339, § 144.

**39-2002 County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.**

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to section 39-2001 or from those roads which were maintained by the Department of Transportation under section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads. The county board shall follow the same procedure for redesignation as is required

by law for initially designating the county primary roads. The principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the department.

**Source:** Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730; Laws 2017, LB339, § 145.

## ARTICLE 21

### FUNCTIONAL CLASSIFICATION

#### Section

- 39-2103. Rural highways; functional classifications.
- 39-2105. Functional classifications; jurisdictional responsibility.
- 39-2106. Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.
- 39-2107. Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.
- 39-2110. Functional classification; specific criteria; assignment to highways, roads, streets.
- 39-2111. Functional classification; assignment; appeal.
- 39-2112. Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.
- 39-2113. Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.
- 39-2115. Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.
- 39-2116. Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.
- 39-2118. Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.
- 39-2120. Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.
- 39-2121. Department of Transportation; counties; municipalities; reports; penalty; when imposed; appeal.
- 39-2124. Legislative intent.

#### **39-2103 Rural highways; functional classifications.**

Rural highways are hereby divided into nine functional classifications as follows:

(1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;

(2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;

(3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This includes super-two, which shall consist of two-lane highways designed primarily for through traffic with passing lanes spaced intermittently and on alternating sides of the highway to provide predictable opportunities to pass slower moving vehicles. This system is characterized by high-speed, relatively long-distance travel patterns;

(4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;

(5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;

(6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;

(8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

**Source:** Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB1068, § 4; Laws 2017, LB113, § 42; Laws 2018, LB1009, § 1.  
Effective date July 19, 2018.

#### Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

### **39-2105 Functional classifications; jurisdictional responsibility.**

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

**Source:** Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB1068, § 5; Laws 2017, LB339, § 146.

**39-2106 Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.**

To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the approval of the Legislature. Of the members of such board, two shall be representatives of the Department of Transportation, three shall be representatives of the counties, one of whom shall be a licensed county highway superintendent in good standing and two of whom shall be county board members, three shall be representatives of the municipalities who shall be either public works directors or licensed city street superintendents in good standing, and three shall be lay citizens who shall represent the three congressional districts of the state. The county members on the board shall represent the various

classes of counties, as defined in section 23-1114.01, in the following manner: One shall be a representative from either a Class 1 or Class 2 county; one shall be a representative from either a Class 3 or Class 4 county; and one shall be a representative from either a Class 5, Class 6, or Class 7 county. The municipal members of the board shall represent municipalities of the following sizes by population: One shall be a representative from a municipality of less than two thousand five hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; one shall be a representative from a municipality of two thousand five hundred to fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; and one shall be a representative from a municipality of over fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census. In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate. At the expiration of the existing term, one member from the county representatives, the municipal representatives, and the lay citizens shall be appointed for a term of two years; and two members from the county representatives, the municipal representatives, and the lay citizens shall be appointed for terms of four years. One representative from the department shall be appointed for a two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each. Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177 for state employees. All expenses of such board shall be paid by the department.

**Source:** Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61; Laws 2017, LB113, § 43; Laws 2017, LB339, § 147.

**39-2107 Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.**

The Department of Transportation shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistants.

**Source:** Laws 1969, c. 312, § 7, p. 1123; Laws 2017, LB339, § 148.

**39-2110 Functional classification; specific criteria; assignment to highways, roads, streets.**

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Transportation, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or



municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

**Source:** Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB1068, § 7; Laws 2017, LB339, § 149.

**39-2111 Functional classification; assignment; appeal.**

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Transportation in assigning any functional classification under section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32; Laws 2017, LB339, § 150.

**Cross References**

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

**39-2112 Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.**

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Transportation to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

**Source:** Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB1068, § 8; Laws 2017, LB339, § 151.

**39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision.**

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it

serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply

to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

**Source:** Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9; Laws 2017, LB339, § 152.

**39-2115 Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.**

The Department of Transportation and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the department, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the plan has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

**Source:** Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153.

**39-2116 Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.**

The Board of Public Roads Classifications and Standards shall review all six-year plans required by sections 39-2115 to 39-2117 or annual metropolitan transportation improvement programs under section 39-2119.01 submitted to it and make such recommendations for changes therein as it believes necessary or desirable in order to achieve the orderly development of an integrated system of highways, roads, and streets, but in so doing the board shall take into account the fact that individual priorities of needs may not lend themselves to immediate integration. The Department of Transportation and each county and municipality shall give careful and serious consideration to any such recommendations received from the board and shall not reject them except for substantial or compelling reason.

**Source:** Laws 1969, c. 312, § 16, p. 1125; Laws 1971, LB 100, § 5; Laws 2007, LB277, § 2; Laws 2017, LB339, § 154.

**39-2118 Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.**

The Department of Transportation shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current year. The annual plan shall be filed on or

before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

**Source:** Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155.

**39-2120 Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.**

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards shall develop and schedule for implementation a standardized system of annual reporting to the board by the Department of Transportation and by counties and municipalities, which system shall include:

(1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;

(2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;

(3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;

(4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;

(5) An approved system of reporting an inventory of machinery, equipment, and supplies; and

(6) An approved system of cost accounting of the operation of equipment.

**Source:** Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156.

**39-2121 Department of Transportation; counties; municipalities; reports; penalty; when imposed; appeal.**

(1) The Department of Transportation and each county and municipality shall make the reports provided for by section 39-2120.

(2) If any county or municipality or the department fails to file such report on or before its due date, the Board of Public Roads Classifications and Standards shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

(3) If any county or municipality either (a) files a materially false report or (b) constructs any highway, road, or street below the minimum standards devel-

oped under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false report and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB339, § 157.

#### Cross References

Administrative Procedure Act, see section 84-920.

### 39-2124 Legislative intent.

It is the intent of the Legislature to recognize the responsibilities of the Department of Transportation, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

**Source:** Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5; Laws 2017, LB339, § 158.

## ARTICLE 22

### NEBRASKA HIGHWAY BONDS

#### Section

- 39-2215. Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.  
 39-2224. Bonds; sale; proceeds; appropriated to Highway Cash Fund.

### **39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.**

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor

vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance

remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

**Source:** Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3; Laws 2017, LB339, § 159.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**39-2224 Bonds; sale; proceeds; appropriated to Highway Cash Fund.**

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

**Source:** Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17; Laws 2017, LB339, § 160.

**ARTICLE 23**

**COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT**

Section

- 39-2305. Board of examiners; office space; equipment; meetings.
- 39-2308. Class B license; term; renewal; fee.
- 39-2308.01. Class A license; application; qualifications; fees; term; renewal.
- 39-2308.03. Licensees; additional licensure; requirements.
- 39-2310. Funds received under act; use.

**39-2305 Board of examiners; office space; equipment; meetings.**

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Transportation. The board shall organize itself by selecting from among its members a

chairperson and such other officers as it may find desirable. The board shall meet at such times at the headquarters of the department in Lincoln, Nebraska, as may be necessary for the administration of the County Highway and City Street Superintendents Act.

**Source:** Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5; Laws 2017, LB339, § 161.

**39-2308 Class B license; term; renewal; fee.**

Any person satisfactorily completing the examination required by section 39-2307 or exempt from such examination under the provisions of subsection (2) of section 39-2306 shall be issued a Class B license as a county highway or city street superintendent. Such license shall be valid for a period of three years and shall be renewable upon the payment of a fee of thirty dollars. If the holder of a Class B license that is up for renewal also holds a Class A license that is not then up for renewal, the renewal of the Class B license shall be extended to coincide with the three-year renewal cycle of the Class A license. Any person holding a license on January 1, 2004, shall be deemed to be holding a Class B license under this section.

**Source:** Laws 1969, c. 144, § 8, p. 668; Laws 2003, LB 500, § 8; Laws 2018, LB733, § 1.  
Operative date October 1, 2018.

**39-2308.01 Class A license; application; qualifications; fees; term; renewal.**

Any person holding a Class B license issued pursuant to section 39-2308 may apply to the board of examiners for a Class A license upon forms prescribed and furnished by the board upon submitting evidence that (1) he or she has been employed and appointed by one or more county or counties or municipality or municipalities as a county highway or city street superintendent at least half-time for at least two years within the past six years or (2) he or she has at least four years' experience in work comparable to street or highway superintending, on at least a half-time basis, within the past eight years. Such application shall be accompanied by a fee of seventy-five dollars. A Class A license shall be valid for a period of three years and shall be renewable for three years as provided in section 39-2308.02 upon payment of a fee of fifty dollars.

**Source:** Laws 2003, LB 500, § 9; Laws 2018, LB733, § 2.  
Operative date October 1, 2018.

**39-2308.03 Licensees; additional licensure; requirements.**

The holder of a county highway superintendent's license shall be entitled to hold a city street superintendent's license of the same or a lower level upon payment of the application fee for that additional license. The holder of a city street superintendent's license shall be entitled to hold a county highway superintendent's license of the same or a lower level upon payment of the application fee for that additional license. A second license shall be placed on the same three-year renewal cycle as the license holder's initial license.

**Source:** Laws 2003, LB 500, § 11; Laws 2018, LB733, § 3.  
Operative date October 1, 2018.

**39-2310 Funds received under act; use.**



All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway Cash Fund. Expenses of the members of the board of examiners as provided in section 39-2304 shall be paid by the Department of Transportation from the Highway Cash Fund.

**Source:** Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13; Laws 2017, LB339, § 162.

## ARTICLE 25

### DISTRIBUTION TO POLITICAL SUBDIVISIONS

#### (a) ROADS

##### Section

- 39-2504. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.
- 39-2505. Incentive payments; Department of Transportation; certify amount; State Treasurer; payment.
- 39-2507. Allocation of funds for road purposes; factors used.
- 39-2508. Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.

#### (b) STREETS

- 39-2514. Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.
- 39-2515. Incentive payments; Department of Transportation, certify amount; State Treasurer; payment.
- 39-2517. Allocation of funds for street purposes; factors used.
- 39-2518. Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.

#### (a) ROADS

**39-2504 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision; payment.**

(1) A reduced incentive payment shall be made to any county or municipal county having in its employ either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any county or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the

incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

**Source:** Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17; Laws 2017, LB339, § 163.

**Cross References**

County Highway and City Street Superintendents Act, see section 39-2301.

**39-2505 Incentive payments; Department of Transportation; certify amount; State Treasurer; payment.**

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2501 to 39-2505. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

**Source:** Laws 1969, c. 315, § 5, p. 1134; Laws 2017, LB339, § 164.

**39-2507 Allocation of funds for road purposes; factors used.**

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

(1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;

(2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;

(3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;

(4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;

(5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;

(6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent; and

(7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

**Source:** Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42; Laws 2017, LB339, § 165.

**39-2508 Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.**

The Department of Transportation shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

**Source:** Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43; Laws 2017, LB339, § 166.

#### (b) STREETS

#### **39-2514 Incentive payment; reduction; when; consulting engineer; when; contracting with another political subdivision.**

(1) A reduced incentive payment shall be made to any municipality or municipal county having in its employ either (a) a licensed city street superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2512 rather than employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

**Source:** Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20; Laws 2017, LB339, § 167.

#### **Cross References**

County Highway and City Street Superintendents Act, see section 39-2301.

#### **39-2515 Incentive payments; Department of Transportation, certify amount; State Treasurer; payment.**

The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under the provisions of sections 39-2511 to 39-2520. The State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

**Source:** Laws 1969, c. 316, § 5, p. 1140; Laws 2017, LB339, § 168.

#### **39-2517 Allocation of funds for street purposes; factors used.**

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

(1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;

(2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and

(3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent.

**Source:** Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49; Laws 2017, LB339, § 169.

**39-2518 Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.**

The Department of Transportation shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

**Source:** Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50; Laws 2017, LB339, § 170.

## ARTICLE 26

### JUNKYARDS

Section

39-2602. Terms, defined.

**39-2602 Terms, defined.**

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

(1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;

(2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Transportation.

**Source:** Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25; Laws 2017, LB339, § 171.

## ARTICLE 27

### BUILD NEBRASKA ACT

Section  
39-2702. Terms, defined.

#### **39-2702 Terms, defined.**

For purposes of the Build Nebraska Act:

(1) Department means the Department of Transportation;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

**Source:** Laws 2011, LB84, § 2; Laws 2017, LB339, § 172.

## ARTICLE 28

### TRANSPORTATION INNOVATION ACT

Section  
39-2802. Terms, defined.  
39-2806. Economic Opportunity Program; created.

#### **39-2802 Terms, defined.**

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the department's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the department and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be

reached which is satisfactory to the department, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Department means the Department of Transportation;

(7) Design-build contract means a contract between the department and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(8) Design-builder means the legal entity which proposes to enter into a design-build contract;

(9) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;

(10) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(11) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(12) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(13) Qualification-based selection process means a process of selecting a construction manager based on qualifications;

(14) Request for proposals means the documentation by which the department solicits proposals; and

(15) Request for qualifications means the documentation or publication by which the department solicits qualifications.

**Source:** Laws 2016, LB960, § 2; Laws 2017, LB339, § 173.

### **39-2806 Economic Opportunity Program; created.**

The Economic Opportunity Program is created. The Department of Transportation shall administer the program in consultation with the Department of Economic Development using funds from the Transportation Infrastructure Bank Fund, except that no more than twenty million dollars shall be expended for this program. The purpose of the program is to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state.

The Department of Transportation shall develop the program, including the application process, criteria for providing funding, matching requirements, and provisions for recapturing funds awarded for projects with unmet obligations, in consultation with statewide associations representing municipal and county officials, economic developers, and the Department of Economic Development. No project shall be approved through the Economic Opportunity Program without an economic impact analysis proving positive economic impact. The details of the program shall be presented to the Appropriations Committee and the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

**Source:** Laws 2016, LB960, § 6; Laws 2017, LB339, § 174.  
Termination date June 30, 2033.





## CHAPTER 42

### HOUSEHOLDS AND FAMILIES

Article.

3. Divorce, Alimony, and Child Support.
  - (d) Domestic Relations Actions. 42-364 to 42-372.02.
9. Domestic Violence.
  - (a) Protection from Domestic Abuse Act. 42-903 to 42-925.
12. Address Confidentiality Act. 42-1203 to 42-1209.
13. Family Member Visitation. Transferred.

#### ARTICLE 3

#### DIVORCE, ALIMONY, AND CHILD SUPPORT

##### (d) DOMESTIC RELATIONS ACTIONS

Section

- 42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
- 42-364.18. Individuals with disabilities; legislative findings.
- 42-369. Support or alimony; presumption; items includable; payments; disbursement; enforcement; health care coverage.
- 42-372.02. Decree; assignment of real estate; affidavit and certificate; filing.

##### (d) DOMESTIC RELATIONS ACTIONS

**42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.**

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support.

Such determinations shall be made by incorporation into the decree of (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex or disability of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having physical custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of trial dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an

appeal. If no such transfer is made, the court shall conduct the termination of parental rights proceeding as provided in the Nebraska Juvenile Code.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(8) For purposes of this section, disability has the same meaning as in 42 U.S.C. 12102, as such section existed on January 1, 2018.

**Source:** Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1; Laws 2013, LB561, § 5; Laws 2018, LB193, § 76; Laws 2018, LB845, § 17.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB193, section 76, with LB845, section 17, to reflect all amendments.

**Note:** Changes made by LB193 became operative July 19, 2018. Changes made by LB845 became effective July 19, 2018.

**Cross References**

**Nebraska Juvenile Code**, see section 43-2,129.

**Parenting Act**, see section 43-2920.

**Violation of custody**, penalty, see section 28-316.

**42-364.18 Individuals with disabilities; legislative findings.**

The Legislature finds that individuals with disabilities, as defined in section 42-364, continue to face unfair, preconceived, and unnecessary societal biases as well as antiquated attitudes regarding their ability to successfully parent their children.

**Source:** Laws 2018, LB845, § 16.  
Effective date July 19, 2018.

**42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health care coverage.**

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees,

or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health care coverage available to him or her through an employer, organization, or other health care coverage entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of health care coverage is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed three percent of his or her gross income. In applying the three-percent standard, the cost is the cost of adding the children to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payments shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is or such expense would reduce the responsible party's net income below the basic subsistence limitation provided in Nebraska Court Rule section 4-218. If such rule does not describe a basic subsistence limitation, the responsible party's net income shall not be reduced below nine hundred three

dollars net monthly income for one person or below the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health care coverage provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance or other health care coverage.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

**Source:** Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6; Laws 2018, LB702, § 1.

Effective date July 19, 2018.

**Cross References**

**Income Withholding for Child Support Act**, see section 43-1701.

**42-372.02 Decree; assignment of real estate; affidavit and certificate; filing.**

(1) When a decree of dissolution of marriage assigns real estate to either party, the party to whom the real estate is assigned may (a) prepare and file with the clerk of the district court an affidavit identifying the real estate by legal description and affirmatively identifying the person entitled to the real estate and (b) prepare for signature and seal by the clerk one or more certificates in a form substantially similar to the following:

**CERTIFICATE OF DISSOLUTION OF MARRIAGE**

....., Clerk of the District Court of ..... County, Nebraska, certifies that in Case No. ...., in such Court, entitled ..... vs. ...., the Court entered its decree of dissolution of marriage in which the interest of ..... in the following described real estate in ..... County, Nebraska:

.....  
.....  
.....  
.....

has been assigned to .....

Dated: .....

(SEAL)

Clerk of the District Court

..... County, Nebraska.

(2) A certificate may include more than one parcel of real estate, but there shall be separate certificates for each party to whom real estate is assigned and separate certificates for each county in which real estate is located. The certificate or certificates shall be delivered by the clerk to the person applying for the same, and such person shall be responsible for recording the certificate or certificates with the register of deeds in the appropriate county or counties as provided in section 76-248.01.

**Source:** Laws 2005, LB 361, § 23; Laws 2018, LB193, § 77.  
Operative date July 19, 2018.

**ARTICLE 9**

**DOMESTIC VIOLENCE**

(a) PROTECTION FROM DOMESTIC ABUSE ACT

Section

42-903. Terms, defined.

42-924. Protection order; when authorized; term; renewal; violation; penalty; construction of sections.

42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

**42-903 Terms, defined.**

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and

conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or

(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318;

(2) Department means the Department of Health and Human Services;

(3) Family or 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. For purposes of this subdivision, 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; and

(4) 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.

**Source:** Laws 1978, LB 623, § 3; Laws 1986, LB 448, § 1; Laws 1989, LB 330, § 5; Laws 1992, LB 1098, § 6; Laws 1993, LB 299, § 4; Laws 1996, LB 1044, § 103; Laws 1998, LB 218, § 18; Laws 2004, LB 613, § 12; Laws 2012, LB310, § 2; Laws 2017, LB289, § 13.

**42-924 Protection order; when authorized; term; renewal; violation; penalty; construction of sections.**

(1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsections (2) and (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

(a) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(b) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(c) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(d) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(e) Ordering the respondent to stay away from any place specified by the court;

(f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(g) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or

(h) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(2) Petitions for protection orders 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. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(b) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed on or after thirty days before the expiration of the previous protection order. Such renewed order shall specify that it is effective for a period of one year to commence on the first day following the expiration of the previous order and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 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 protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

**Source:** Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17; Laws 2012, LB310, § 3; Laws 2017, LB289, § 14.

**42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.**

(1) An order issued under section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the request of the petitioner, or upon the court's own motion, 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 the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order. If the respondent does not so appear and show cause, the temporary order shall be affirmed and shall be deemed the final protection order. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be



affirmed and the service of the ex parte order shall be notice of the final protection order for purposes of prosecution under subsection (4) of section 42-924.

(2) If an order under section 42-924 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 hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

(3) The court may by rule or order refer or assign all matters regarding orders issued under section 42-924 to a referee for findings and recommendations.

(4) An order issued under section 42-924 shall remain in effect for the period provided in subsection (3) of section 42-924, unless dismissed or modified by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(5) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

**Source:** Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36; Laws 2012, LB310, § 4; Laws 2017, LB289, § 15.

## ARTICLE 12

### ADDRESS CONFIDENTIALITY ACT

#### Section

42-1203. Terms, defined.

42-1204. Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

42-1209. Program participants; application assistance.

#### **42-1203 Terms, defined.**

For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

- (3) Dating relationship means an intimate or sexual relationship;
- (4) Program participant means a person certified as a program participant under section 42-1204;
- (5) Sexual assault has the same meaning as in section 28-319, 28-319.01, 28-320, 28-320.01, or 28-386;
- (6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05; and
- (7) Trafficking victim has the same meaning as in section 28-830.

**Source:** Laws 2003, LB 228, § 3; Laws 2006, LB 1199, § 31; Laws 2017, LB280, § 1.

**42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.**

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, or stalking or is a trafficking victim and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, stalking, or trafficking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

**Source:** Laws 2003, LB 228, § 4; Laws 2017, LB280, § 2.

**42-1209 Program participants; application assistance.**

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, or stalking or trafficking victims to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

**Source:** Laws 2003, LB 228, § 9; Laws 2017, LB280, § 3.

**ARTICLE 13****FAMILY MEMBER VISITATION**

## Section

- 42-1301. Transferred to section 30-701.
- 42-1302. Transferred to section 30-702.
- 42-1303. Transferred to section 30-704.
- 42-1304. Transferred to section 30-705.

**42-1301 Transferred to section 30-701.**

**42-1302 Transferred to section 30-702.**

**42-1303 Transferred to section 30-704.**

**42-1304 Transferred to section 30-705.**



## CHAPTER 43

### INFANTS AND JUVENILES

Article.

1. Adoption Procedures.
  - (a) General Provisions. 43-102.
2. Juvenile Code.
  - (b) General Provisions. 43-246.02.
  - (c) Law Enforcement Procedures. 43-248 to 43-251.02.
  - (d) Preadjudication Procedures. 43-253 to 43-261.01.
  - (e) Prosecution. 43-274.
  - (g) Disposition. 43-283.01 to 43-296.
  - (i) Miscellaneous Provisions. 43-2,108.
  - (j) Separate Juvenile Courts. 43-2,112 to 43-2,119.
  - (k) Citation and Construction of Code. 43-2,129.
5. Assistance for Certain Children. 43-512.12 to 43-536.
12. Uniform Child Custody Jurisdiction and Enforcement Act. 43-1238.
13. Foster Care.
  - (a) Foster Care Review Act. 43-1303 to 43-1318.
  - (b) Transition of Employees. 43-1322. Repealed.
14. Parental Support and Paternity. 43-1411.01.
16. Child Support Referees. 43-1609, 43-1611.
19. Child Abuse Prevention. 43-1906.
21. Age of Majority. 43-2101.
24. Juvenile Services. 43-2401 to 43-2413.
26. Child Care. 43-2606.
29. Parenting Act. 43-2924, 43-2933.
42. Nebraska Children’s Commission. 43-4203 to 43-4218.
43. Office of Inspector General of Nebraska Child Welfare Act. 43-4301 to 43-4332.
44. Child Welfare Services. 43-4406.
45. Young Adult Bridge to Independence Act. 43-4513.
47. Nebraska Strengthening Families Act. 43-4701 to 43-4715.
48. Judicial Emancipation of a Minor. 43-4801 to 43-4812.

#### ARTICLE 1

#### ADOPTION PROCEDURES

##### (a) GENERAL PROVISIONS

Section

- 43-102. Petition requirements; decree; adoptive home study, when required; jurisdiction; filings.

##### (a) GENERAL PROVISIONS

**43-102 Petition requirements; decree; adoptive home study, when required; jurisdiction; filings.**

Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43-104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.25, and a completed preplace-

ment adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption 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 to be adopted 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 adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding.

Except as set out in subdivisions (1)(b)(ii), (iii), (iv), and (v) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the Department of Health and Human Services or a licensed child placement agency.

**Source:** Laws 1943, c. 104, § 2, p. 349; R.S.1943, § 43-102; Laws 1975, LB 224, § 1; Laws 1983, LB 146, § 1; Laws 1984, LB 510, § 2; Laws 1985, LB 255, § 18; Laws 1993, LB 16, § 1; Laws 1995, LB 712, § 19; Laws 1996, LB 1001, § 1; Laws 1998, LB 1041, § 6; Laws 1999, LB 375, § 2; Laws 1999, LB 594, § 9; Laws 2007, LB247, § 4; Laws 2007, LB296, § 62; Laws 2018, LB193, § 78. Operative date July 19, 2018.

**Cross References**

Nebraska Indian Child Welfare Act, see section 43-1501.  
 Nebraska Juvenile Code, see section 43-2,129.

**ARTICLE 2  
 JUVENILE CODE**

**(b) GENERAL PROVISIONS**

**Section**

43-246.02. Transfer of jurisdiction to district court; bridge order; criteria; records; modification.

**(c) LAW ENFORCEMENT PROCEDURES**

43-248. Temporary custody of juvenile without warrant; when.  
 43-250. Temporary custody; disposition; custody requirements.  
 43-251.01. Juveniles; placements and commitments; restrictions.  
 43-251.02. Reference to clinically credentialed community-based provider.

**(d) PREADJUDICATION PROCEDURES**

43-253. Temporary custody; investigation; release; when.  
 43-254. Placement or detention pending adjudication; restrictions; assessment of costs.

Section

- 43-260.01. Detention; factors.
- 43-261.01. Juvenile court petition; felony or crime of domestic violence; court provide explanation of firearm possession consequences.

(e) PROSECUTION

- 43-274. County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or mediation; transfer; procedures; appeal.

(g) DISPOSITION

- 43-283.01. Preserve and reunify the family; reasonable efforts; requirements.
- 43-285. Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.
- 43-286. Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.
- 43-286.01. Juveniles; graduated response; probation officer; duties; powers; county attorney; file action to revoke probation; when.
- 43-292.02. Termination of parental rights; state; duty to file petition; when.
- 43-296. Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.

(i) MISCELLANEOUS PROVISIONS

- 43-2,108. Juvenile court; record; case file; how kept; certain reports and records not open to inspection without order of court; exceptions.

(j) SEPARATE JUVENILE COURTS

- 43-2,112. Establishment; petition; election; clerk of county court; duties.
- 43-2,113. Rooms and offices; jurisdiction; powers and duties.
- 43-2,119. Judges; number; presiding judge.

(k) CITATION AND CONSTRUCTION OF CODE

- 43-2,129. Code, how cited.

(b) GENERAL PROVISIONS

**43-246.02 Transfer of jurisdiction to district court; bridge order; criteria; records; modification.**

(1) A juvenile court may terminate its jurisdiction under subdivision (3)(a) of section 43-247 by transferring jurisdiction over the juvenile’s custody, physical care, and visitation to the district court through a bridge order, if all of the following criteria are met:

(a) The juvenile has been adjudicated under subdivision (3)(a) of section 43-247 in an active juvenile court case and a dispositional order in that case is in place;

(b) Paternity of the juvenile has been legally established, including by operation of law due to an individual’s marriage to the mother at the time of conception, birth, or at any time during the period between conception and birth of the child; by operation of law pursuant to section 43-1409; by order of a court of competent jurisdiction; or by administrative order when authorized by law;

(c) The juvenile has been safely placed by the juvenile court with a legal parent; and

(d) The juvenile court has determined that its jurisdiction under subdivision (3)(a) of section 43-247 should properly end once orders for custody, physical care, and visitation are entered by the district court.

(2) When the criteria in subsection (1) of this section are met, a legal parent or guardian ad litem to a juvenile adjudicated under subdivision (3)(a) of section 43-247 in juvenile court may file a motion with the juvenile court for a bridge order under subsection (3) of this section. The parent is not required to intervene in the action. The motion shall be set for evidentiary hearing by the juvenile court no less than thirty days or more than ninety days from the date of the filing of the motion. The juvenile court, on its own motion, may also set an evidentiary hearing on the issue of a bridge order if such hearing is set no less than thirty days from the date of notice to the parties. The court may waive the evidentiary hearing if all issues raised in the motion for a bridge order are resolved by agreement of all parties and entry of a stipulated order.

(3) A motion for a bridge order shall:

(a) Allege that the juvenile court action filed under subdivision (3)(a) of section 43-247 may safely be closed once orders for custody, physical care, and visitation have been entered by the district court;

(b) State the relief sought by the petitioning legal parent or guardian ad litem;

(c) Disclose any other action or proceedings affecting custody of the juvenile, including proceedings related to domestic violence, protection orders, terminations of parental rights, and adoptions, including the docket number, court, county, and state of any such proceeding;

(d) State the names and addresses of any persons other than the legal parents who have a court order for physical custody or claim to have custody or visitation rights with the juvenile; and

(e) Name as a respondent any other person who has any relation to the controversy.

(4) A juvenile court shall designate the petitioner and respondent for purposes of a bridge order. A bridge order shall only address matters of legal and physical custody and parenting time. All other matters, including child support, shall be resolved by filing a separate petition or motion or by action of the child support enforcement office and shall be subject to existing applicable statutory provisions. No mediation or specialized alternative dispute resolution under section 42-364 shall be required in either district court or juvenile court where the juvenile has entered a bridge order. The Parenting Act shall not apply to the entry of the bridge order in juvenile or district court.

(5) When necessary and feasible, the juvenile court shall obtain child custody determinations from foreign jurisdictions pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.

(6) Upon transferring jurisdiction from a juvenile court to a district court, the clerk of the district court shall docket the case under either a new docket or any previous docket establishing custody or paternity of a child. The transfer of jurisdiction shall not result in new filing fees and other court costs being assessed against the parties.

(7) The district court shall give full force and effect to the juvenile court bridge order as to custody and parenting time and shall not modify the juvenile court bridge order without modification proceedings as provided in subsection (9) of this section.

(8) A district court shall take judicial notice of the juvenile court pleadings and orders in any hearing held subsequent to transfer. Records contained in the



district court case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 43-2,108 and other confidentiality provisions of the Nebraska Juvenile Code, and such records shall only be disclosed, upon request, to the child support enforcement office without a court order.

(9) Following the issuance of a bridge order, a party may file a petition in district court for modification of the bridge order as to legal and physical custody or parenting time. If the petition for modification is filed within one year after the filing date of the bridge order, the party requesting modification shall not be required to demonstrate a substantial change of circumstance but instead shall demonstrate that such modification is in the best interests of the child. If a petition for modification is filed within one year after the filing date of the bridge order, filing fees and other court costs shall not be assessed against the parties.

(10) Nothing in this section shall be construed to require appointment of counsel for the parties in the district court action.

(11) Nothing in this section shall be construed to interfere with the jurisdictional provisions of section 25-2740.

**Source:** Laws 2017, LB180, § 1; Laws 2018, LB708, § 1.  
Effective date July 19, 2018.

#### Cross References

**Parenting Act**, see section 43-2920.

**Uniform Child Custody Jurisdiction and Enforcement Act**, see section 43-1226.

### (c) LAW ENFORCEMENT PROCEDURES

#### **43-248 Temporary custody of juvenile without warrant; when.**

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and such juvenile was eleven years of age or older at the time of the violation, and the officer has reasonable grounds to believe such juvenile committed such violation and was eleven years of age or older at the time of the violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(6) The officer has reasonable grounds to believe the juvenile is truant from school;

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801; or

(8) A juvenile has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and such juvenile was under eleven years of age at the time of such act or behavior, and the officer has reasonable cause to believe such juvenile committed such act or engaged in such behavior and was under eleven years of age at such time.

**Source:** Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14; Laws 2013, LB255, § 10; Laws 2016, LB894, § 3; Laws 2018, LB670, § 1.  
Operative date July 19, 2018.

### **43-250 Temporary custody; disposition; custody requirements.**

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), (5), or (8) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (8) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in detention or an alternative to detention and securing placement in such setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while await-

ing transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2), (7), or (8) of section 43-248, and not released under subdivision (1)(a) of this section, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of

the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody pursuant to subdivision (3) of section 43-248 shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement or alternative to detention of a juvenile under this section, the peace officer shall select the placement or alternative which is least restrictive of the juvenile's freedom so long as such placement or alternative is compatible with the best interests of the juvenile and the safety of the community. Any alternative to detention shall cause the least restriction of the juvenile's freedom of movement consistent with the best interest of the juvenile and the safety of the community.

**Source:** Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11; Laws 2015, LB294, § 15; Laws 2016, LB894, § 5; Laws 2018, LB670, § 2.

Operative date July 19, 2018.

#### **43-251.01 Juveniles; placements and commitments; restrictions.**

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center;

(5)(a) Before July 1, 2019, a juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; and

(b) On and after July 1, 2019:

(i) A juvenile shall not be detained unless the physical safety of persons in the community would be seriously threatened or detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months;

(ii) A child twelve years of age or younger shall not be placed in detention under any circumstances; and

(iii) A juvenile shall not be placed into detention:

(A) To allow a parent or guardian to avoid his or her legal responsibility;

(B) To punish, treat, or rehabilitate such juvenile;

(C) To permit more convenient administrative access to such juvenile;

(D) To facilitate further interrogation or investigation; or

(E) Due to a lack of more appropriate facilities;

(6) A juvenile alleged to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

**Source:** Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10; Laws 2015, LB482, § 1; Laws 2016, LB894, § 6; Laws 2018, LB670, § 3.  
Operative date April 24, 2018.

#### **43-251.02 Reference to clinically credentialed community-based provider.**

A peace officer, upon making contact with a child who is in need of assistance, may refer the child and child's parent or parents or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services.

**Source:** Laws 2015, LB482, § 2; Laws 2018, LB670, § 4.  
Operative date July 19, 2018.

### (d) PREADJUDICATION PROCEDURES

#### **43-253 Temporary custody; investigation; release; when.**

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in detention or an alternative to detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (1)(c) of section 43-250 or subsection (6) of section 43-286.01 or pursuant to an alleged violation of an order for conditional release shall be detained in any detention facility or be subject to an alternative to detention infringing upon the juvenile's liberty interest for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention, services, or supervision is necessary. The juvenile shall be represented by counsel at the hearing. Whether such counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of section 43-272. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (1)(c)(v) of section 43-250. A juvenile placed in an alternative to detention, but not in detention, may waive this hearing through counsel.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the

juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that:

(a) Before July 1, 2019, further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; and

(b) On or after July 1, 2019, the physical safety of persons in the community would be seriously threatened or that detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months.

**Source:** Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15; Laws 2001, LB 451, § 6; Laws 2010, LB800, § 16; Laws 2016, LB894, § 7; Laws 2017, LB8, § 1; Laws 2018, LB670, § 5.  
Operative date April 24, 2018.

#### Cross References

Clerk magistrate, authority to determine temporary custody of juvenile, see section 24-519.

### **43-254 Placement or detention pending adjudication; restrictions; assessment of costs.**

Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under section 43-283.01.

**Source:** Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17; Laws 2013, LB561, § 11; Laws 2017, LB289, § 16.

#### **43-260.01 Detention; factors.**

The need for preadjudication placement, services, or supervision and the need for detention of a juvenile and whether detention or an alternative to detention is indicated shall be subject to subdivision (5) of section 43-251.01 and shall be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that detention is not required, the juvenile shall be released without restriction or released to an alternative to detention; and

(3) If the results indicate that detention is required, detention shall be pursued.

**Source:** Laws 2000, LB 1167, § 14; Laws 2013, LB561, § 13; Laws 2016, LB894, § 11; Laws 2018, LB670, § 6.  
Operative date April 24, 2018.

#### **43-261.01 Juvenile court petition; felony or crime of domestic violence; court provide explanation of firearm possession consequences.**

(1) When the petition alleges the juvenile committed an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence, the court shall explain the specific legal consequences that an adjudication for such an act will have on the juvenile's right to possess a firearm. The court shall provide such explanation at the earlier of:

(a) The juvenile's first court appearance or, if the juvenile is not present in the court at the time of the first appearance, by written notice sent by regular mail to the juvenile's last-known address; or

(b) Prior to adjudication.

(2) For purposes of this section:

(a) Firearm has the same meaning as in section 28-1201; and

(b) Misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

**Source:** Laws 2018, LB990, § 6.  
Effective date July 19, 2018.

#### (e) PROSECUTION

#### **43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or mediation; transfer; procedures; appeal.**



(1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts, the county attorney or city attorney may offer mediation to the juvenile and the victim of the juvenile's act. If both the juvenile and the victim agree to mediation, the juvenile, his or her parent, guardian, or custodian, and the victim shall sign a mediation consent form and select a mediator or approved center from the roster made available pursuant to section 25-2908. The county attorney or city attorney shall refer the juvenile and the victim to such mediator or approved center. The mediation sessions shall occur within thirty days after the date the mediation referral is made unless an extension is approved by the county attorney or city attorney. The juvenile or his or her parent, guardian, or custodian shall pay the mediation fees. The fee shall be determined by the mediator in private practice or by the approved center. A juvenile shall not be denied services at an approved center because of an inability to pay.

(b) Terms of the mediation agreement shall specify monitoring, completion, and reporting requirements. The county attorney or city attorney, the court, or the probation office shall be notified by the designated monitor if the juvenile does not complete the agreement within the agreement's specified time.

(c) Terms of the agreement may include one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim; and
- (iv) Any other areas of agreement.

(d) If no mediation agreement is reached, the mediator or approved center will report that fact to the county attorney or city attorney within forty-eight hours of the final mediation session excluding nonjudicial days.

(e) If a mediation agreement is reached and the agreement does not violate public policy, the agreement shall be approved by the county attorney or city attorney. If the agreement is not approved and the victim agrees to return to mediation (i) the juvenile may be referred back to mediation with suggestions for changes needed in the agreement to meet approval or (ii) the county attorney or city attorney may proceed with the filing of a criminal charge or juvenile court petition. If the juvenile agrees to return to mediation but the victim does not agree to return to mediation, the county attorney or city attorney may consider the juvenile's willingness to return to mediation when determining whether or not to file a criminal charge or a juvenile court petition.

(f) If the juvenile meets the terms of an approved mediation agreement, the county attorney or city attorney shall not file a criminal charge or juvenile court petition against the juvenile for the acts for which the juvenile was referred to mediation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

(5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.

An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the 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 any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.

If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

**Source:** Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13; Laws 2014, LB464, § 16; Laws 2017, LB11, § 2.

#### (g) DISPOSITION

##### **43-283.01 Preserve and reunify the family; reasonable efforts; requirements.**

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsections (4) and (5) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the

juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if the family includes a child who was conceived by the victim of a sexual assault and a biological parent is convicted of the crime under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320, the convicted biological parent of such child shall not be considered a part of the child's family for purposes of requiring reasonable efforts to preserve and reunify the family.

(6) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(7) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

**Source:** Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1; Laws 2017, LB289, § 17.

#### Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

**43-285 Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.**

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a

ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

(b) The department shall provide opportunities for the child, in an age or developmentally appropriate manner, to be consulted in the development of his or her plan as provided in the Nebraska Strengthening Families Act.

(c) The department shall include in the plan for a child who is fourteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to help the child prepare for the transition from foster care to a successful adulthood. The court shall also ask the child, in an age or developmentally appropriate manner, if he or she participated in the development of his or her plan and make a finding regarding the child's participation in the development of his or her plan as provided in the Nebraska Strengthening Families Act. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(d) The last court hearing before jurisdiction pursuant to subdivision (3)(a) of section 43-247 is terminated for a child who is sixteen years of age or older shall be called the independence hearing. In addition to other matters and requirements to be addressed at this hearing, the independence hearing shall address the child's future goals and plans and access to services and support for the transition from foster care to adulthood consistent with section 43-1311.03 and the Young Adult Bridge to Independence Act. The child shall not be required to attend the independence hearing, but efforts shall be made to encourage and enable the child's attendance if the child wishes to attend, including scheduling the hearing at a time that permits the child's attendance. An independence coordinator as provided in section 43-4506 shall attend the hearing if reasonably practicable, but the department is not required to have legal counsel present. At the independence hearing, the court shall advise the child about the bridge to independence program, including, if applicable, the right of young adults in the bridge to independence program to request a court-appointed, client-directed attorney under subsection (1) of section 43-4510 and the benefits and role of such attorney and to request additional permanency

review hearings in the bridge to independence program under subsection (5) of section 43-4508 and how to request such a hearing. The court shall also advise the child, if applicable, of the rights he or she is giving up if he or she chooses not to participate in the bridge to independence program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677. The court shall also make a finding as to whether the child has received the documents as required by subsection (9) of section 43-1311.03.

(3)(a) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department shall also concurrently file a written sibling placement report as described in subsection (3) of section 43-1311.02 at these times.

(b) The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including all of the child's siblings that are known to the department, at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall afford a parent or an adult sibling the option of refusing to receive such notifications. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible.

(c) The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the

court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

**Source:** Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5; Laws 2015, LB243, § 11; Laws 2016, LB746, § 16; Laws 2018, LB1078, § 1.  
Effective date July 19, 2018.

#### Cross References

**Foster Care Review Act**, see section 43-1318.

**Medical Assistance Act**, see section 68-901.

**Nebraska Strengthening Families Act**, see section 43-4701.

**Young Adult Bridge to Independence Act**, see section 43-4501.

### **43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.**

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a)(i) This subdivision applies until October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer;

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or

(C) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a)(i) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment.

(ii) This subdivision applies beginning October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer; or

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer;

(b)(i) This subdivision applies to all juveniles committed to the Office of Juvenile Services prior to July 1, 2013. The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(ii) This subdivision applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

(A) The motion shall set forth specific factual allegations that support the motion and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267; and

(B) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(I) All levels of probation supervision have been exhausted;

(II) All options for community-based services have been exhausted; and

(III) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person

or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

After the hearing, the court may commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center as a condition of an order of intensive supervised probation. Upon commitment by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section.

The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision.

The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan; or

(c) Beginning July 1, 2013, and until October 1, 2013, the court may commit such juvenile to the Office of Juvenile Services for community supervision.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or until October 1, 2013, enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or



at an approved center selected from the roster made available pursuant to section 25-2908.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications and the county attorney may file a motion to revoke the juvenile's probation.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall not be confined, detained, or otherwise significantly deprived of his or her liberty pursuant to the filing of a motion described in this section unless the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met. In all cases when the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met and the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or a court order, the juvenile shall be given a preliminary hearing. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the

terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

(6) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(7) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

**Source:** Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972, § 3; Laws 2013, LB561, § 23; Laws 2014, LB464, § 20; Laws 2017, LB8, § 2; Laws 2018, LB670, § 7.  
Operative date July 19, 2018.

#### Cross References

Juvenile probation officers, appointment, see section 29-2253.

Placements and commitments, restrictions, see section 43-251.01.

### **43-286.01 Juveniles; graduated response; probation officer; duties; powers; county attorney; file action to revoke probation; when.**

(1) For purposes of this section, graduated response means an accountability-based series of sanctions, incentives, and services designed to facilitate the juvenile's continued progress in changing behavior, ongoing compliance, and successful completion of probation. Graduated response does not include restrictions of liberty that would otherwise require a hearing under subsection (3) of section 43-253.

(2) The Office of Probation Administration may establish a statewide standardized graduated response matrix of incentives for compliance and positive behaviors and sanctions for probationers who violate the terms and conditions of a court order. The graduated response system shall use recognized best practices and be developed with the input of stakeholders, including judges, probation officers, county attorneys, defense attorneys, juveniles, and parents. The office shall provide implementation and ongoing training to all probation officers on the graduated response options.

(3) Graduated response sanctions should be immediate, certain, consistent, and fair to appropriately address the behavior. Failure to complete a sanction may result in repeating the sanction, increasing the duration, or selecting a different sanction similar in nature. Continued failure to comply could result in a request for a motion to revoke probation. Once a sanction is successfully completed the alleged probation violation is deemed resolved and cannot be alleged as a violation in future proceedings.

(4) Graduated response incentives should provide positive reinforcement to encourage and support positive behavior change and compliance with court-ordered conditions of probation.

(5) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed a violation of the terms of the juvenile's probation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more graduated response sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose graduated response sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If graduated response sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the graduated response sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. If the juvenile fails to satisfy the graduated response sanctions and the office determines that a motion to revoke probation should be pursued, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the county attorney of the county where probation was imposed and to the juvenile's attorney of record, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer. The report shall also include a statement regarding why graduated response sanctions were not utilized or were ineffective. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the juvenile shall be appointed.

(6) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248. Continued detention or deprivation of liberty shall be subject to the criteria and requirements of sections 43-251.01, 43-260, and 43-260.01 and subdivision (5)(b)(iv) of section 43-286, and a hearing shall be held before the court within twenty-four hours as provided in subsection (3) of section 43-253.

(7) Immediately after detention or deprivation of liberty pursuant to subsection (6) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and the juvenile's attorney of record and submit a written report describing the risk of harm to lives or property or of fleeing the jurisdiction which precipitated the need for such detention or deprivation of liberty and of any violation of probation. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the

juvenile shall be appointed. After prompt consideration of the written report, the county attorney shall:

(a) Order the release of the juvenile from confinement or alternative to detention subject to the supervision of a probation officer; or

(b) File with the adjudicating court a motion to revoke the probation.

(8) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation and the probation officer is seeking revocation of probation, the county attorney may file a motion to revoke probation.

(9) Whenever a juvenile subject to supervision of a probation officer is engaging in positive behavior, completion of goals, and compliance with the terms of probation, the probation officer shall use graduated incentives to provide positive reinforcement and encouragement of such behavior. The office shall keep records of all incentives and provide such records to the county attorney or the juvenile's attorney upon request.

(10) During the term of probation, the court, on application of a probation officer or of the juvenile or on its own motion, may reduce or eliminate any of the conditions imposed on the juvenile. Upon completion of the term of probation or the earlier discharge of the juvenile, the juvenile shall be relieved of any obligations imposed by the order of the court and his or her record shall be sealed pursuant to section 43-2,108.04.

(11) The probation administrator shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2010, LB800, § 7; R.S.Supp.,2010, § 29-2262.08; Laws 2011, LB463, § 5; Laws 2017, LB8, § 3.

#### **43-292.02 Termination of parental rights; state; duty to file petition; when.**

(1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the

juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

(4) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if a child is conceived by the victim of a sexual assault, a petition for termination of parental rights of the perpetrator shall be granted if such termination is in the best interests of the child and (a) the perpetrator has been convicted of or pled guilty or nolo contendere to sexual assault of the child's birth parent under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 or (b) the perpetrator has fathered the child or given birth to the child as a result of such sexual assault.

**Source:** Laws 1998, LB 1041, § 29; Laws 2017, LB289, § 18.

#### Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

### **43-296 Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.**

All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

**Source:** Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146; Laws 2012, LB1160, § 11; Laws 2013, LB222, § 6; Laws 2017, LB417, § 5.

Department of Health and Human Services, supervisory powers, see section 43-707.

(i) MISCELLANEOUS PROVISIONS

**43-2,108 Juvenile court; record; case file; how kept; certain reports and records not open to inspection without order of court; exceptions.**

(1) The juvenile court judge shall keep a record of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. The case file shall contain the complaint or petition and subsequent pleadings. 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.

(2) Except as provided in subsections (3) and (4) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this section, confidential record information means all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) The court shall provide copies of predispositional reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

(5) In all cases under sections 43-246.01 and 43-247, the office of Inspector General of Nebraska Child Welfare may submit a written request to the probation administrator for access to the records of juvenile probation officers in a specific case. Upon a juvenile court order, the records shall be provided to the Inspector General within five days for the exclusive use in an investigation pursuant to the Office of Inspector General of Nebraska Child Welfare Act. Nothing in this subsection shall prevent the notification of death or serious injury of a juvenile to the Inspector General of Nebraska Child Welfare pursuant to section 43-4318 as soon as reasonably possible after the Office of Probation Administration learns of such death or serious injury.

(6) In all cases under sections 43-246.01 and 43-247, the juvenile court shall disseminate confidential record information to the Foster Care Review Office pursuant to the Foster Care Review Act.

(7) Nothing in subsections (3), (5), and (6) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(8)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

(9) Nothing in subsection (3), (5), or (6) of this section shall be construed to restrict the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement. Such dissemination by the Office of Probation Administration shall be authorized by an order of a judge or court. Such information shall be subject to state and federal confidentiality laws and shall not include that the child is in the care, custody, or control of the Department of Health and Human Services or under the supervision of the Office of Probation Administration.

**Source:** Laws 1981, LB 346, § 65; Laws 1997, LB 622, § 73; Laws 2014, LB464, § 25; Laws 2015, LB347, § 2; Laws 2016, LB954, § 1; Laws 2017, LB225, § 4; Laws 2018, LB193, § 79.  
Operative date July 19, 2018.

Cross References

Foster Care Review Act, see section 43-1318.  
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.  
Records Management Act, see section 84-1220.

(j) SEPARATE JUVENILE COURTS

**43-2,112 Establishment; petition; election; clerk of county court; duties.**

The question of whether or not there shall be established a separate juvenile court in any county having a population of seventy-five thousand or more inhabitants shall be submitted to the registered voters of any such county at the first statewide general election or at any special election held not less than four months after the filing with the Secretary of State of a petition requesting the establishment of such court signed by registered voters of such county in a number not less than five percent of the total votes cast for Governor in such county at the general state election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall there be established in . . . . . County a separate juvenile court?

. . . . . Yes

. . . . . No

The election shall be conducted and the ballots shall be counted and canvassed in the manner prescribed by the Election Act.

After a separate juvenile court has been established, the clerk of the county court shall forthwith transfer to the trial docket of the separate juvenile court all pending matters within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the judge thereof.

**Source:** Laws 1959, c. 189, § 2, p. 683; Laws 1976, LB 669, § 2; Laws 1977, LB 118, § 1; Laws 1979, LB 373, § 2; R.S.Supp.,1980, § 43-229; Laws 1981, LB 346, § 69; Laws 1984, LB 973, § 2; Laws 1994, LB 76, § 553; Laws 2018, LB193, § 80.  
Operative date July 19, 2018.

Cross References

Election Act, see section 32-101.

**43-2,113 Rooms and offices; jurisdiction; powers and duties.**

(1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of



minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the trial docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the district court who shall maintain a record as provided in subsection (4) of section 42-364. There shall be no fee charged for the filing of such certified copies.

**Source:** Laws 1959, c. 189, § 3, p. 684; Laws 1961, c. 205, § 2, p. 618; Laws 1963, c. 527, § 1, p. 1653; R.S.1943, (1978), § 43-230; Laws 1981, LB 499, § 41; Laws 1981, LB 346, § 70; Laws 1984, LB 13, § 78; Laws 1984, LB 973, § 3; Laws 1985, LB 447, § 33; Laws 1985, Second Spec. Sess., LB 7, § 64; Laws 1986, LB 529, § 49; Laws 1986, LB 600, § 11; Laws 1991, LB 830, § 30; Laws 1993, LB 435, § 2; Laws 1994, LB 490, § 2; Laws 1996, LB 1296, § 21; Laws 1997, LB 229, § 35; Laws 2007, LB554, § 40; Laws 2018, LB193, § 81.

Operative date July 19, 2018.

#### **43-2,119 Judges; number; presiding judge.**

(1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:

(a) Two judges in counties having seventy-five thousand inhabitants but less than two hundred thousand inhabitants;

(b) Four judges in counties having at least two hundred thousand inhabitants but less than four hundred thousand inhabitants; and

(c) Six judges in counties having four hundred thousand inhabitants or more.

(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.

**Source:** Laws 1972, LB 1362, § 1; Laws 1973, LB 446, § 1; Laws 1976, LB 669, § 3; R.S.1943, (1978), § 43-233.01; Laws 1981, LB 346, § 76; Laws 1995, LB 19, § 2; Laws 1998, LB 404, § 3; Laws 2001, LB 23, § 3; Laws 2007, LB377, § 4; Laws 2017, LB10, § 1.

#### (k) CITATION AND CONSTRUCTION OF CODE

##### **43-2,129 Code, how cited.**

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

**Source:** Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25; Laws

2014, LB464, § 26; Laws 2015, LB482, § 6; Laws 2017, LB180, § 2; Laws 2018, LB990, § 7.  
Effective date July 19, 2018.

## ARTICLE 5 ASSISTANCE FOR CERTAIN CHILDREN

### Section

- 43-512.12. Title IV-D child support order; review by Department of Health and Human Services; when; noncustodial parent incarcerated; notice to parents.  
43-512.15. Title IV-D child support order; modification; when; procedures.  
43-536. Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.

### **43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when; noncustodial parent incarcerated; notice to parents.**

(1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(a) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(b) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

Health care coverage cases may be modified within three years of entry of the order.

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, or lottery winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

(3) Notwithstanding the time periods set forth in subdivision (1)(a) of this section, within fifteen business days of learning that a noncustodial parent will be incarcerated for more than one hundred eighty calendar days, the department shall send notice by first-class mail to both parents informing them of the right to request the state to review and, if appropriate, adjust the order. Such notice shall be sent to the incarcerated parent at the address of the facility at which the parent is incarcerated.

**Source:** Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10; Laws 2010, LB712, § 25; Laws 2018, LB702, § 2.  
Effective date July 19, 2018.

Cross References

Medical Assistance Act, see section 68-901.

**43-512.15 Title IV-D child support order; modification; when; procedures.**

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.

(2) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

**Source:** Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11; Laws 2010, LB712, § 26; Laws 2018, LB702, § 3.  
Effective date July 19, 2018.

**43-536 Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.**

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth

percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates, (2) an applicable child care or early childhood education program, as defined in section 71-1954, that is participating in the quality rating and improvement system and has received a rating of step three or higher under the Step Up to Quality Child Care Act may be reimbursed at higher rates based upon the program's quality scale rating under the quality rating and improvement system, and (3) for the fiscal year beginning on July 1, 2017, such rate may not be less than the fiftieth percentile or the rate for the immediately preceding fiscal year and for the fiscal year beginning on July 1, 2018, such rate may not be less than the sixtieth percentile for the last three quarters of the fiscal year or the rate for the fiscal year beginning on July 1, 2016.

**Source:** Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123; Laws 2011, LB464, § 1; Laws 2013, LB507, § 14; Laws 2017, LB335, § 1.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

## ARTICLE 12

### UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section

43-1238. Initial child custody jurisdiction.

**43-1238 Initial child custody jurisdiction.**

(a) Except as otherwise provided in section 43-1241, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 43-1244 or 43-1245, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (a)(2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 43-1244 or 43-1245; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

**Source:** Laws 2003, LB 148, § 13; Laws 2018, LB670, § 8.  
Operative date July 19, 2018.

## ARTICLE 13 FOSTER CARE

### (a) FOSTER CARE REVIEW ACT

Section

- 43-1303. Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties.
- 43-1306. Children and Juveniles Data Feasibility Study Advisory Group; created; members; meetings; duties; Data Steering Subcommittee; Information-Sharing Subcommittee.
- 43-1311.02. Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties; right of sibling to intervene.
- 43-1318. Act, how cited.

### (b) TRANSITION OF EMPLOYEES

- 43-1322. Repealed. Laws 2017, LB225, § 20.

### (a) FOSTER CARE REVIEW ACT

**43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties.**

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in section 28-830. The department, the Office of Probation Administration, and every court and child-placing

agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth, gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including (i) initial placement date, (ii) current placement date, (iii) the name and address of the foster care placement, (iv) if a relative placement or kinship placement, whether the foster care placement is licensed, and (v) whether the foster care placement has received a waiver pursuant to section 71-1904 and the basis for such waiver;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4)(a) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices.

(b) Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data.

(c) The Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements.

(d) The executive director of the office shall provide reports regarding child welfare and juvenile justice data and information on March 1, June 1, September 1, and December 1. The September 1 report shall be the annual report. The executive director shall provide additional reports at a time specified by the Health and Human Services Committee of the Legislature. The reports shall include issues, policy concerns, problems which have come to the attention of the office, and analysis of the data. The reports shall recommend alternatives to the identified problems and related needs of the foster care system. The reports and recommendations submitted to the Legislature shall be submitted electronically.

(e) The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

**Source:** Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10; Laws 2015, LB265, § 9; Laws 2015, LB294, § 16; Laws 2017, LB289, § 19; Laws 2018, LB840, § 1; Laws 2018, LB1078, § 2.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB840, section 1, with LB1078, section 2, to reflect all amendments.

**43-1306 Children and Juveniles Data Feasibility Study Advisory Group; created; members; meetings; duties; Data Steering Subcommittee; Information-Sharing Subcommittee.**

(1) The Children and Juveniles Data Feasibility Study Advisory Group is created. The advisory group shall oversee a feasibility study to identify how existing state agency data systems currently used to account for the use of all services, programs, and facilities by children and juveniles in the State of Nebraska can be used to establish an independent, external data warehouse. The Foster Care Review Office shall provide administrative support for the feasibility study and the advisory group.

(2) The advisory group shall include the Inspector General of Nebraska Child Welfare or his or her designee, the State Court Administrator or his or her designee, the probation administrator of the Office of Probation Administration or his or her designee, the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee, the Commissioner of Education or his or her designee, the executive director of the Foster Care Review Office or his or her designee, the Chief Information Officer of the office of Chief Information Officer or his or her designee, and the chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The advisory group shall:

(a) Meet at least twice a year;

(b) Carry out in good faith the duties provided in this section;

(c) Create a Data Steering Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific technical knowledge of the agency's data structure, limitation, and capabilities to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss data-related items, including the technological and system issues of each agency's current data system, specific barriers that impact the implementation of a data warehouse, and steps necessary to establish and sustain a data warehouse. The subcommittee shall report its findings to the advisory group;

(d) Create an Information-Sharing Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific knowledge of the agency's legal and regulatory responsibilities and restrictions related to sharing data to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss the legal and regulatory barriers to establishing a data warehouse and to identify possible solutions. The subcommittee shall report its findings to the advisory group; and

(e) Submit a written report electronically to the Legislature on October 1 of 2017 and 2018, detailing the technical and legal steps necessary to establish the Children and Juveniles Data Warehouse by July 1, 2019. The report to be submitted on October 1, 2018, shall include the final results of the feasibility study to establish the data warehouse by July 1, 2019. The results of the feasibility study shall not be binding on any agency.

(4) For purposes of this section, independent, external data warehouse means a data system which allows for the collection, storage, and analysis of data from multiple agencies but is not solely controlled by the agencies providing the data.

(5) This section terminates on December 31, 2019.

**Source:** Laws 2017, LB225, § 5.

**43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties; right of sibling to intervene.**

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times and even if the children have no preexisting relationship.



(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department. The court shall make a determination as to whether reasonable efforts have been made by the department to facilitate sibling placement and sibling visitation or other ongoing interaction and whether such placement and visitation or other ongoing interaction is contrary to the safety or well-being of any of the siblings.

(3) The department shall file a written sibling placement report as required by subsection (3) of section 43-285. Such a report shall include the reasonable efforts of the department to locate the child's siblings and, if a joint-sibling placement is made, whether such placement continues to be consistent with the safety and well-being of the children. If joint-sibling placement is not possible, the report shall include the reasons why a joint-sibling placement is and continues to be contrary to the safety or well-being of any of the siblings, the department's continuing reasonable efforts to place a child with a sibling in the same foster care or adoptive placement, and the department's continuing reasonable efforts to facilitate sibling visitation.

(4) Parties to the case, including a child's sibling, may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(6) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(7) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible

following the entry of the court order or authorization as necessary to facilitate the sibling time.

(8) For purposes relative to the administration of the federal foster care program and the state plans pursuant to Title IV-B and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, the term sibling means an individual considered to be a sibling under Nebraska law or an individual who would have been considered a sibling but for a termination of parental rights or other disruption of parental rights such as death of a parent.

(9) A sibling of a child under the jurisdiction of the court shall have the right to intervene at any point in the proceedings for the limited purpose of seeking joint-sibling placement, sibling visitation, or ongoing interaction with their sibling.

(10) This section shall not be construed to subordinate the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child or to subordinate the rights of an adoptive, foster, or biological parent to the rights of a child seeking sibling placement or visitation.

**Source:** Laws 2011, LB177, § 7; Laws 2015, LB296, § 2; Laws 2018, LB1078, § 3.  
Effective date July 19, 2018.

#### **43-1318 Act, how cited.**

Sections 43-1301 to 43-1321 shall be known and may be cited as the Foster Care Review Act.

**Source:** Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2; Laws 2011, LB177, § 9; Laws 2014, LB908, § 7; Laws 2015, LB265, § 15; Laws 2017, LB225, § 6.

### (b) TRANSITION OF EMPLOYEES

#### **43-1322 Repealed. Laws 2017, LB225, § 20.**

## **ARTICLE 14**

### **PARENTAL SUPPORT AND PATERNITY**

#### Section

43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

#### **43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.**

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

(3) The court may stay the paternity action if there is a pending criminal allegation of sexual assault under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 against the alleged father with regard to the conception of the child.

**Source:** Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46; Laws 2013, LB561, § 44; Laws 2017, LB289, § 20.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

Parenting Act, see section 43-2920.

## ARTICLE 16

### CHILD SUPPORT REFEREES

Section

43-1609. Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.

43-1611. Support and paternity matters; protection orders; referral or assignment.

**43-1609 Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.**

(1) Child support referees shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and protection orders issued under section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. The Supreme Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

**Source:** Laws 1989, LB 265, § 2; Laws 1991, LB 715, § 21; Laws 2008, LB1014, § 49; Laws 2017, LB289, § 21.

**43-1611 Support and paternity matters; protection orders; referral or assignment.**

A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, paternity

matters, and protection orders issued under section 42-924 to a child support referee for findings and recommendations.

**Source:** Laws 1989, LB 265, § 4; Laws 1991, LB 715, § 23; Laws 2008, LB1014, § 51; Laws 2017, LB289, § 22.

## ARTICLE 19 CHILD ABUSE PREVENTION

Section

43-1906. Nebraska Child Abuse Prevention Fund; established; investment; use.

### **43-1906 Nebraska Child Abuse Prevention Fund; established; investment; use.**

(1) There is hereby established the Nebraska Child Abuse Prevention Fund. The additional child abuse prevention fee as provided in section 33-106.03, the additional charge for supplying a certified copy of the record of any birth as provided in sections 71-612, 71-617.15, 71-627, and 71-628, and all amounts which may be received from grants, gifts, bequests, the federal government, or other sources granted or given for the purposes specified in sections 43-1901 to 43-1906 shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund. The fund shall be administered and disbursed by the department.

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

(3) In any one fiscal year, no more than twenty percent of the annually appropriated funds shall be disbursed to any one agency, organization, or individual.

(4) Funds allocated from the fund shall only be used for purposes authorized under sections 43-1901 to 43-1906 and shall not be used to supplant any existing governmental program or service. No grants may be made to any state department or agency.

**Source:** Laws 1986, LB 333, § 6; Laws 1995, LB 7, § 39; Laws 2002, LB 1310, § 4; Laws 2002, Second Spec. Sess., LB 48, § 2; Laws 2017, LB307, § 4.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 21 AGE OF MAJORITY

Section

43-2101. Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

### **43-2101 Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.**

All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person (1) eighteen years of age or older and who is not a ward of the state may enter into a binding contract or lease of whatever kind or nature and shall be legally responsible therefor and (2) eighteen years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

**Source:** R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S.1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6; Laws 2010, LB226, § 2; Laws 2018, LB982, § 1.  
Effective date July 19, 2018.

**Cross References**

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

**ARTICLE 24  
JUVENILE SERVICES**

Section

- 43-2401. Act, how cited.
- 43-2404.01. Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.
- 43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.
- 43-2409. Eligible applicants; performance review; commission; powers; use of grants; limitation.
- 43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.
- 43-2412. Coalition; powers and duties.
- 43-2413. Repealed. Laws 2018, LB670, § 21.

**43-2401 Act, how cited.**

Sections 43-2401 to 43-2412 shall be known and may be cited as the Juvenile Services Act.

**Source:** Laws 1990, LB 663, § 1; Laws 2000, LB 1167, § 40; Laws 2001, LB 640, § 2; Laws 2018, LB670, § 9.  
Operative date April 24, 2018.

**43-2404.01 Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.**

(1) To be eligible for participation in either the Commission Grant Program or the Community-based Juvenile Services Aid Program, a comprehensive juvenile services plan shall be developed, adopted, and submitted to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, and the University of Nebraska at Omaha, Juvenile Justice Institute. Such plan may be

developed by eligible applicants for the Commission Grant Program and by individual counties, by multiple counties, by federally recognized or state-recognized Indian tribes, or by any combination of the three for the Community-based Juvenile Services Aid Program. Comprehensive juvenile services plans shall:

(a) Be developed by a comprehensive community team representing juvenile justice system stakeholders;

(b) Be based on data relevant to juvenile and family issues, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(c) Identify policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(d) Identify clear implementation strategies; and

(e) Identify how the impact of the program or service will be measured.

(2) Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 and 43-533 and shall include policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes.

(3) The commission, in consultation with the University of Nebraska at Omaha, Juvenile Justice Institute, shall contract for the development and administration of a statewide system to monitor and evaluate the effectiveness of plans and programs receiving funds from (a) the Commission Grant Program and (b) the Community-based Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(4) There is established within the commission the position of Director of the Community-based Juvenile Services Aid Program, appointed by the executive director of the commission. The director shall have extensive experience in developing and providing community-based services.

(5) The director shall be supervised by the executive director of the commission. The director shall:

(a) Provide technical assistance and guidance for the development of comprehensive juvenile services plans;

(b) Coordinate the review of the Community-based Juvenile Services Aid Program application as provided in section 43-2404.02 and make recommendations for the distribution of funds provided under the Community-based Juve-

nile Services Aid Program, giving priority to those grant applications funding programs and services that will divert juveniles from the juvenile justice system, impact and effectively treat juveniles within the juvenile justice system, and reduce the juvenile detention population or assist juveniles in transitioning from out-of-home placements to in-home treatments. The director shall ensure that no funds appropriated or distributed under the Community-based Juvenile Services Aid Program are used for purposes prohibited under subsection (3) of section 43-2404.02;

(c) Develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on the effectiveness of juvenile services that receive funds from the Community-based Juvenile Services Aid Program, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(d) Develop relationships and collaborate with juvenile justice system stakeholders, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Assist juvenile justice system stakeholders in developing policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(f) Develop and coordinate a statewide working group as a subcommittee of the coalition to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(g) Work with the coalition in facilitating the coalition's obligations under the Community-based Juvenile Services Aid Program.

**Source:** Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1; Laws 2013, LB561, § 47; Laws 2016, LB746, § 21; Laws 2018, LB670, § 10. Operative date April 24, 2018.

**43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.**

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2)(a) Ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be set aside for the development of a common data set and

evaluation of the effectiveness of the Community-based Juvenile Services Aid Program. The intent in creating this common data set is to allow for evaluation of the use of the funds and the effectiveness of the programs or outcomes in the Community-based Juvenile Services Aid Program.

(b) The common data set shall be developed and maintained by the commission and shall serve as a primary data collection site for any intervention funded by the Community-based Juvenile Services Aid Program designed to serve juveniles and deter involvement in the formal juvenile justice system. The commission shall work with agencies and programs to enhance existing data sets. To ensure that the data set permits evaluation of recidivism and other measures, the commission shall work with the Office of Probation Administration, juvenile diversion programs, law enforcement, the courts, and others to compile data that demonstrates whether a youth has moved deeper into the juvenile justice system. The University of Nebraska at Omaha, Juvenile Justice Institute, shall assist with the development of common definitions, variables, and training required for data collection and reporting into the common data set by juvenile justice programs. The common data set maintained by the commission shall be provided to the University of Nebraska at Omaha, Juvenile Justice Institute, to assess the effectiveness of the Community-based Juvenile Services Aid Program.

(c) Providing the commission access to records and information for, as well as the commission granting access to records and information from, the common data set is not a violation of confidentiality provisions under any law, rule, or regulation if done in good faith for purposes of evaluation. Records and documents, regardless of physical form, that are obtained or produced or presented to the commission for the common data set are not public records for purposes of sections 84-712 to 84-712.09.

(d) The ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be appropriated as follows: In fiscal year 2015-16, seven percent shall go to the commission for development of the common data set and three percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. In fiscal year 2016-17, six percent shall go to the commission for development and maintenance of the common data set and four percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. Every fiscal year thereafter, beginning in fiscal year 2017-18, five percent shall go to the commission for development and maintenance of the common data set and five percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation.

(e) The remaining funds in the annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.



(3)(a) In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements.

(b) Funds received under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; truancy prevention and intervention programs; pilot projects approved by the commission; payment of transportation costs to and from placements, evaluations, or services; personnel when the personnel are aligned with evidence-based treatment principles, programs, or practices; contracting with other state agencies or private organizations that provide evidence-based treatment or programs; preexisting programs that are aligned with evidence-based practices or best practices; and other services that will positively impact juveniles and families in the juvenile justice system.

(c) Funds received under the Community-based Juvenile Services Aid Program may be used one time by an aid recipient:

(i) To convert an existing juvenile detention facility or other existing structure for use as an alternative to detention as defined in section 43-245;

(ii) To invest in capital construction, including both new construction and renovations, for a facility for use as an alternative to detention; or

(iii) For the initial lease of a facility for use as an alternative to detention.

(d) Funds received under the Community-based Juvenile Services Aid Program shall not be used for the following:

(i) Construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities;

(ii) Capital construction or the lease or acquisition of facilities beyond the one-time use described in subdivision (3)(c) of this section;

(iii) Programs, services, treatments, evaluations, or other preadjudication services that are not based on or grounded in evidence-based practices, principles, and research, except that the commission may approve pilot projects that authorize the use of such aid; or

(iv) Office equipment, office supplies, or office space.

(e) Any aid not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(f) If a county, multiple counties, or a federally recognized or state-recognized Indian tribe or tribes is denied aid under this section or receives no aid under this section, the entity may request an appeal pursuant to the appeal process in rules and regulations adopted and promulgated by the commission. The commission shall establish appeal and hearing procedures by December

15, 2014. The commission shall make appeal and hearing procedures available on its web site.

(4)(a) Any recipient of aid under the Community-based Juvenile Services Aid Program shall electronically file an annual report as required by rules and regulations adopted and promulgated by the commission. Any program funded through the Community-based Juvenile Services Aid Program that served juveniles shall report data on the individual youth served. Any program that is not directly serving youth shall include program-level data. In either case, data collected shall include, but not be limited to, the following: The type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the juveniles served, program outcomes, the total number of juveniles served, and the number of juveniles who completed the program or intervention.

(b) Any recipient of aid under the Community-based Juvenile Services Aid Program shall be assisted by the University of Nebraska at Omaha, Juvenile Justice Institute, in reporting in the common data set, as set forth in the rules and regulations adopted and promulgated by the commission. Community-based aid utilization and evaluation data shall be stored and maintained by the commission.

(c) Evaluation of the use of funds and the evidence of the effectiveness of the programs shall be completed by the University of Nebraska at Omaha, Juvenile Justice Institute, specifically:

(i) The varying rates of recidivism, as defined by rules and regulations adopted and promulgated by the commission, and other measures for juveniles participating in community-based programs; and

(ii) Whether juveniles are sent to staff secure or secure juvenile detention after participating in a program funded by the Community-based Juvenile Services Aid Program.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for aid appropriated under the Community-based Juvenile Services Aid Program. The report shall include, but not be limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, whether any recipients used the funds for a purpose described in subdivision (3)(c) of this section, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

(a) The required elements of a comprehensive juvenile services plan and planning process;

(b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;

(c) A distribution process for funds retained under subsection (3) of this section;

(d) A plan for evaluating the effectiveness of plans and programs receiving funding;

(e) A reporting process for aid recipients;

(f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature; and

(g) Requirements regarding the use of the common data set.

**Source:** Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48; Laws 2014, LB464, § 30; Laws 2015, LB265, § 16; Laws 2018, LB670, § 11.

Operative date April 24, 2018.

**43-2409 Eligible applicants; performance review; commission; powers; use of grants; limitation.**

(1) The coalition shall review periodically the performance of eligible applicants participating under the Commission Grant Program and the federal act to determine if substantial compliance criteria are being met. The commission shall establish criteria for defining substantial compliance.

(2) Grants received by an eligible applicant under the Commission Grant Program shall not be used to replace or supplant any funds currently being used to support existing programs for juveniles.

(3) Grants received under the Commission Grant Program shall not be used for capital construction or the lease or acquisition of facilities except as provided in subdivision (3)(c) of section 43-2404.02.

**Source:** Laws 1990, LB 663, § 9; Laws 1992, LB 447, § 11; Laws 1997, LB 424, § 6; Laws 2000, LB 1167, § 47; Laws 2001, LB 640, § 11; Laws 2018, LB670, § 12.

Operative date April 24, 2018.

**43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.**

(1) The Nebraska Coalition for Juvenile Justice is created. Coalition members who are members of the judicial branch of government shall be nonvoting members of the coalition. The coalition members shall be appointed by the Governor and shall include the members required under subsection (2) or (3) of this section.

(2) Before June 15, 2018:

(a) As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition;

(b) The coalition shall include:

(i) The Administrator of the Office of Juvenile Services;

- (ii) The chief executive officer of the Department of Health and Human Services or his or her designee;
  - (iii) The Commissioner of Education or his or her designee;
  - (iv) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;
  - (v) The executive director of the Nebraska Association of County Officials or his or her designee;
  - (vi) The probation administrator of the Office of Probation Administration or his or her designee;
  - (vii) One county commissioner or supervisor;
  - (viii) One person with data analysis experience;
  - (ix) One police chief;
  - (x) One sheriff;
  - (xi) The executive director of the Foster Care Review Office;
  - (xii) One separate juvenile court judge;
  - (xiii) One county court judge;
  - (xiv) One representative of mental health professionals who works directly with juveniles;
  - (xv) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;
  - (xvi) One volunteer who works with juvenile offenders or potential juvenile offenders;
  - (xvii) One person who works with an alternative to a detention program for juveniles;
  - (xviii) The director or his or her designee from a youth rehabilitation and treatment center;
  - (xix) The director or his or her designee from a secure juvenile detention facility;
  - (xx) The director or his or her designee from a staff secure youth confinement facility;
  - (xxi) At least five members who are under twenty-four years of age when appointed;
  - (xxii) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;
  - (xxiii) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;
  - (xxiv) One member of a regional behavioral health authority established under section 71-808;
  - (xxv) One county attorney; and
  - (xxvi) One public defender;
- (c) A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four years at the time of appointment; and

(d) Except as provided in subsection (4) of this section, the terms of members appointed pursuant to subdivisions (2)(b)(vii) through (2)(b)(xxvi) of this section shall be three years, except that the terms of the initial appointments of members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor.

(3) On and after June 15, 2018, the coalition shall include:

(a) The chief executive officer of the Department of Health and Human Services or his or her designee;

(b) The Commissioner of Education or his or her designee;

(c) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(d) The executive director of the Nebraska Association of County Officials or his or her designee;

(e) The probation administrator of the Office of Probation Administration or his or her designee;

(f) One county commissioner or supervisor;

(g) One representative from law enforcement;

(h) The executive director of the Foster Care Review Office;

(i) One separate juvenile court judge;

(j) One county court judge;

(k) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(l) The director or his or her designee from a secure juvenile detention facility or a staff secure youth confinement facility;

(m) At least one member who is under twenty-four years of age when appointed, with juvenile justice experience preferred;

(n) One at-large member;

(o) One member of a regional behavioral health authority established under section 71-808;

(p) One county attorney; and

(q) One juvenile public defender or defense attorney.

(4)(a) Except as provided in subdivisions (c) through (e) of this subsection, members of the coalition serving prior to June 15, 2018, shall continue to serve on the coalition as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed.

(b) The terms of the members appointed pursuant to subdivisions (3)(f) through (3)(q) of this section shall be three years.

(c) The positions created pursuant to subdivisions (2)(b)(i), (viii), (x), (xiv), (xvi), (xvii), (xviii), (xx), (xxii), and (xxiii) of this section shall cease to exist on June 15, 2018.

(d) The police chief appointed pursuant to subdivision (2)(b)(ix) of this section shall continue to serve until the representative from law enforcement under subdivision (3)(g) of this section is appointed.

(e) The director or his or her designee from a secure juvenile detention facility appointed pursuant to subdivision (2)(b)(xix) of this section shall continue to serve until the member under subdivision (3)(l) of this section is appointed.

(5) Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(6) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(7) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

**Source:** Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138; Laws 2013, LB561, § 49; Laws 2018, LB670, § 13.

Operative date April 24, 2018.

#### **43-2412 Coalition; powers and duties.**

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Prepare at least one report annually to the Governor, the Legislature, the Office of Probation Administration, and the Office of Juvenile Services. The report submitted to the Legislature shall be submitted electronically;

(c) Ensure widespread citizen involvement in all phases of its work; and

(d) Meet at least two times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(b) Apply for and receive funds from federal and private sources for carrying out its powers and duties;

(c) Provide technical assistance to eligible applicants;

(d) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system; and

(e) Recommend guidelines and supervision procedures to be used to develop or expand local diversion programs for juveniles from the juvenile justice system.

(3) In formulating, adopting, and promulgating the recommendations and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

**Source:** Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640,

§ 12; Laws 2012, LB782, § 48; Laws 2013, LB561, § 50; Laws 2018, LB670, § 14.

Operative date April 24, 2018.

**43-2413 Repealed. Laws 2018, LB670, § 21.**

Operative date April 24, 2018.

**ARTICLE 26  
CHILD CARE**

Section

43-2606. Providers of child care and school-age-care programs; training requirements.

**43-2606 Providers of child care and school-age-care programs; training requirements.**

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) The department shall initiate a system of documenting the training levels of staff in specific child care settings to assist parents in selecting optimal care settings.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. Preservice orientation and the training requirements for providers of child care programs shall include, but not be limited to, information on sudden unexpected infant death syndrome, shaken baby syndrome, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

**Source:** Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149; Laws 2018, LB717, § 1.

Effective date July 19, 2018.

**ARTICLE 29**  
**PARENTING ACT**

## Section

43-2924. Applicability of act.

43-2933. Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

**43-2924 Applicability of act.**

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43. The Parenting Act shall also apply to subsequent modifications of bridge orders entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support or a bridge order entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

**Source:** Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57; Laws 2017, LB180, § 3.

**Cross References**

**Income Withholding for Child Support Act**, see section 43-1701.

**Revised Uniform Reciprocal Enforcement of Support Act**, applicability, see section 42-7.105.

**Uniform Interstate Family Support Act**, see section 42-701.

**43-2933 Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.**

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's



household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) Except as otherwise provided in the Nebraska Indian Child Welfare Act, no person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 and the child was conceived as a result of that violation unless the custodial parent or guardian, as defined in section 43-245, consents.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

**Source:** Laws 2007, LB554, § 14; Laws 2017, LB289, § 23.

#### Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.  
Sex Offender Registration Act, see section 29-4001.

## ARTICLE 42

### NEBRASKA CHILDREN'S COMMISSION

#### Section

- 43-4203. Nebraska Children's Commission; duties; establish networks; service area; develop strategies; committees created; use of facilitated conferencing; develop system-of-care plan; contents; analyze workforce issues.
- 43-4207. Nebraska Children's Commission; reports.
- 43-4218. Normalcy Task Force; Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

**43-4203 Nebraska Children's Commission; duties; establish networks; service area; develop strategies; committees created; use of facilitated conferencing; develop system-of-care plan; contents; analyze workforce issues.**

(1) The Nebraska Children's Commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the

continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system. Each service area shall develop its own unique strategies to be included in the statewide strategic plan. The Department of Health and Human Services shall assist in identifying the needs of each service area.

(2)(a) The commission shall create a committee to examine state policy regarding the prescription of psychotropic drugs for children who are wards of the state and the administration of such drugs to such children. Such committee shall review the policy and procedures for prescribing and administering such drugs and make recommendations to the commission for changes in such policy and procedures.

(b) The commission shall create a committee to examine the Office of Juvenile Services and the Juvenile Services Division of the Office of Probation Administration. Such committee shall review the role and effectiveness of out-of-home placements utilized in the juvenile justice system, including the youth rehabilitation and treatment centers, and make recommendations to the commission on the juvenile justice continuum of care, including what populations should be served in out-of-home placements and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the University of Nebraska at Omaha, Juvenile Justice Institute, the University of Nebraska Medical Center, Center for Health Policy, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. The recommendations shall include a plan to implement a continuum of care in the juvenile justice system to meet the needs of Nebraska families, including specific recommendations for the rehabilitation and treatment model. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature annually by September 1.

(c) The commission may organize committees as it deems necessary. Members of the committees may be members of the commission or may be appointed, with the approval of the majority of the commission, from individuals with knowledge of the committee's subject matter, professional expertise to assist the committee in completing its assigned responsibilities, and the ability to collaborate within the committee and with the commission to carry out the powers and duties of the commission. No member of any committee created pursuant to this section shall have any private financial interest, profit, or benefit from any work of such committee.

(d) The Title IV-E Demonstration Project Committee created pursuant to section 43-4208 and the Foster Care Reimbursement Rate Committee appointed pursuant to section 43-4216 are under the jurisdiction of the commission.

(3) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.03. Facilitated conferencing shall be included in statewide strategic plan discussions by the commission. Facilitated conferencing shall continue to be utilized and maximized, as determined by the court of jurisdiction, during the development of the statewide strategic plan. Funding

and contracting with mediation centers approved by the Office of Dispute Resolution to provide facilitated conferencing shall continue to be provided by the office of the State Court Administrator at an amount of no less than the General Fund transfer under subsection (1) of section 43-247.04.

(4) The commission shall gather information and communicate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Cross-over Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(5) The commission shall coordinate and gather information about the progress and outcomes of the Nebraska Juvenile Service Delivery Project established pursuant to section 43-4101.

(6) The commission shall develop a system-of-care plan beginning with prevention services through treatment services for the child welfare system based on relevant data and evidence-based practices to meet the specific needs of each area of the state. Such system-of-care plan shall include services that are goal-driven and outcome-based and shall evaluate the feasibility of utilizing performance-based contracting for specific child welfare services, including the feasibility of additional contractual requirements for service providers requiring services to all children without an option to deny service.

(7) The commission shall analyze case management workforce issues and make recommendations to the Health and Human Services Committee of the Legislature regarding:

(a) Salary comparisons with other states and the current pay structure based on job descriptions;

(b) Utilization of incentives for persons who work in the area of child welfare;

(c) Evidence-based training requirements for persons who work in the area of child welfare and their supervisors; and

(d) Collaboration with the University of Nebraska to increase and sustain such workforce.

**Source:** Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56; Laws 2014, LB464, § 33; Laws 2016, LB746, § 25; Laws 2018, LB732, § 1.  
Effective date July 19, 2018.

#### **43-4207 Nebraska Children's Commission; reports.**

The Nebraska Children's Commission shall provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature of its activities during the previous year on or before December 1, 2015. If the commission is continued by the Legislature as provided in section 43-4202, the commission shall provide such report on or before September 1 of each year the commission is continued.

**Source:** Laws 2012, LB821, § 7; Laws 2015, LB87, § 2; Laws 2018, LB732, § 2.  
Effective date July 19, 2018.

**43-4218 Normalcy Task Force; Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.**

(1)(a) The Normalcy Task Force is created. On July 1, 2017, the Normalcy Task Force shall become the Nebraska Strengthening Families Act Committee.

(b)(i) Beginning July 1, 2016, until July 1, 2017, the Normalcy Task Force shall monitor and make recommendations regarding the implementation in Nebraska of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2016.

(ii) On and after July 1, 2017, the Nebraska Strengthening Families Act Committee shall monitor and make recommendations regarding the implementation in Nebraska of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act.

(2) Until July 1, 2017, the members of the task force, and on and after July 1, 2017, the members of the committee shall include, but not be limited to, (a) representatives from the legislative, executive, and judicial branches of government. The representatives from the legislative and judicial branches shall be nonvoting, ex officio members, (b) no fewer than three young adults currently or previously in foster care which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) a representative from the juvenile probation system, (d) the executive director of the Foster Care Review Office, (e) one or more representatives from a child welfare advocacy organization, (f) one or more representatives from a child welfare service agency, (g) one or more representatives from an agency providing independent living services, (h) one or more representatives of a child-care institution as defined in section 43-4703, (i) one or more current or former foster parents, (j) one or more parents who have experience in the foster care system, (k) one or more professionals who have relevant practical experience such as a caseworker, and (l) one or more guardians ad litem who practice in juvenile court.

(3) On or before July 1, 2016, the Nebraska Children's Commission shall appoint the members of the task force. On July 1, 2017, the members of the task force shall become members of the committee, shall serve the amount of time remaining on their initial terms of office, and are eligible for reappointment by the Nebraska Children's Commission. Members shall be appointed for terms of two years. The commission shall appoint a chairperson or chairpersons of the committee and may fill vacancies on the committee as such vacancies occur.

(4) The committee shall provide a written report with recommendations regarding the initial and ongoing implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act and related efforts to improve normalcy for children in foster care and related populations to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the Department of Health and Human Services, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

**Source:** Laws 2016, LB746, § 23; Laws 2017, LB225, § 7; Laws 2018, LB732, § 3.

Effective date July 19, 2018.

**Cross References**

**Nebraska Strengthening Families Act**, see section 43-4701.

**ARTICLE 43**  
**OFFICE OF INSPECTOR GENERAL OF**  
**NEBRASKA CHILD WELFARE ACT**

## Section

- 43-4301. Act, how cited.
- 43-4318. Office; duties; reports of death, serious injury, or allegations of sexual abuse; when required; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.
- 43-4323. Inspector General; powers; rights of person required to provide information.
- 43-4325. Reports of investigations; distribution; redact confidential information; powers of office; summarized final report; release.
- 43-4327. Inspector General's report of investigation; contents; distribution.
- 43-4328. Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.
- 43-4332. Disclosure of information by employee; personnel actions prohibited.

**43-4301 Act, how cited.**

Sections 43-4301 to 43-4332 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

**Source:** Laws 2012, LB821, § 8; Laws 2015, LB347, § 4; Laws 2017, LB207, § 1.

**43-4318 Office; duties; reports of death, serious injury, or allegations of sexual abuse; when required; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.**

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) Subject to subsection (3) of this section, the juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program, juvenile pretrial diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division when the office, upon review, determines the death or serious injury did not occur by chance; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

(2) The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report to the office (a) all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury and (b) all allegations of sexual abuse of a state ward, juvenile on probation, juvenile in a detention facility, and juvenile in a residential child-caring agency. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(3) With respect to any investigation conducted by the Inspector General pursuant to subdivision (1)(a) of this section that involves possible misconduct by an employee of the juvenile services division, the Inspector General shall immediately notify the probation administrator and provide the information pertaining to potential personnel matters to the Office of Probation Administration.

(4) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(5) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children

and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

**Source:** Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13; Laws 2016, LB954, § 3; Laws 2017, LB207, § 2; Laws 2018, LB1078, § 4.  
Effective date July 19, 2018.

#### Cross References

Child Protection and Family Safety Act, see section 28-710.

Nebraska County Juvenile Services Plan Act, see section 43-3501.

Uniform Credentialing Act, see section 38-101.

### **43-4323 Inspector General; powers; rights of person required to provide information.**

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned. Any fees associated with counsel present under this section shall not be the responsibility of the office of Inspector General of Nebraska Child Welfare.

**Source:** Laws 2012, LB821, § 30; Laws 2017, LB207, § 3.

### **43-4325 Reports of investigations; distribution; redact confidential information; powers of office; summarized final report; release.**

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3)(a) A summarized final report based on an investigation may be publicly released in order to bring awareness to systemic issues.

(b) Such report shall be released only:

(i) After a disclosure is made to the appropriate chairperson or chairpersons pursuant to subsection (2) of this section; and

(ii) If a determination is made by the Inspector General with the appropriate chairperson that doing so would be in the best interest of the public.

(c) If there is disagreement about whether releasing the report would be in the best interest of the public, the chairperson of the Executive Board of the Legislative Council may be asked to make the final decision.

(4) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(5) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

**Source:** Laws 2012, LB821, § 32; Laws 2015, LB347, § 18; Laws 2017, LB207, § 4.

**43-4327 Inspector General's report of investigation; contents; distribution.**

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report beyond the entity that is the subject of the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division, the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

**Source:** Laws 2012, LB821, § 34; Laws 2015, LB347, § 20; Laws 2017, LB207, § 5.

**43-4328 Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.**

(1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The written response may include corrections of factual errors. The Inspector General, with input from



the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) After the recommendations have been accepted, rejected, or modified, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within thirty days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report and shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

**Source:** Laws 2012, LB821, § 35; Laws 2015, LB347, § 21; Laws 2017, LB207, § 6.

#### Cross References

Uniform Credentialing Act, see section 38-101.

### **43-4332 Disclosure of information by employee; personnel actions prohibited.**

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the office which the employee reasonably believes evidences wrongdoing under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing under the act to the office by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony pursuant to an investigation by the office.

**Source:** Laws 2017, LB207, § 7.

**ARTICLE 44**  
**CHILD WELFARE SERVICES**

## Section

43-4406. Child welfare services; report; contents.

**43-4406 Child welfare services; report; contents.**

On or before each September 15, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30 immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(5) The following information as obtained for each service area and lead agency or the pilot project:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months,

and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(7) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue;

(8) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was

notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date; and

(9) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases.

**Source:** Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13; Laws 2017, LB417, § 6; Laws 2018, LB1078, § 5.  
Effective date July 19, 2018.

## ARTICLE 45

### YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

#### Section

43-4513. Bridge to Independence Advisory Committee; members; terms; duties; meetings; report; contents.

**43-4513 Bridge to Independence Advisory Committee; members; terms; duties; meetings; report; contents.**

(1) On or before July 1, 2013, the Nebraska Children's Commission shall appoint a Bridge to Independence Advisory Committee to make recommendations to the department and the Nebraska Children's Commission regarding the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512. The Bridge to Independence Advisory Committee shall meet on a biannual basis to advise the department and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and shall provide a written report regarding ongoing implementation, including participation in the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by September 1 of each year. By December 15, 2015, the committee shall develop specific recommendations for expanding to or improving outcomes for similar groups of at-risk young adults. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service

agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

**Source:** Laws 2013, LB216, § 13; Laws 2014, LB853, § 43; Laws 2015, LB243, § 23; Laws 2018, LB732, § 4.  
Effective date July 19, 2018.

## ARTICLE 47

### NEBRASKA STRENGTHENING FAMILIES ACT

#### Section

- 43-4701. Act, how cited.
- 43-4702. Legislative findings and intent.
- 43-4703. Terms, defined.
- 43-4704. Rights of child.
- 43-4706. Department; duties; contract requirements; caregiver; duties; written notice posted; normalcy plan; contents; normalcy report; contents.
- 43-4707. Training for foster parents.
- 43-4709. Parental rights; consultation with parent; documentation; family team meeting.
- 43-4714. Rules and regulations.
- 43-4715. Missing child; department and probation; duties.

#### **43-4701 Act, how cited.**

Sections 43-4701 to 43-4715 shall be known and may be cited as the Nebraska Strengthening Families Act.

**Source:** Laws 2016, LB746, § 1; Laws 2017, LB225, § 8.

#### **43-4702 Legislative findings and intent.**

The Legislature finds that every day a parent makes important decisions about his or her child's participation in activities and that a caregiver for a child in out-of-home care is faced with making the same decisions for a child in his or her care.

The Legislature also finds that, when a caregiver makes decisions, he or she must consider applicable laws, rules, and regulations to safeguard the health and safety of a child in out-of-home care and that those laws, rules, and regulations have commonly been interpreted to prohibit children in out-of-home care from participating in extracurricular, enrichment, cultural, and social activities.

The Legislature further finds that participation in these types of activities is important to a child's well-being, not only emotionally, but in developing valuable life skills.

It is the intent of the Legislature to recognize the importance of parental rights and the different rights that exist dependent on a variety of factors, including the age and maturity of the child, the status of the case, and the child's placement.

It is the intent of the Legislature to recognize the importance of race, culture, and identity for children in out-of-home care.

It is the intent of the Legislature to recognize the importance of making every effort to normalize the lives of children in out-of-home care and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard.

It is the intent of the Legislature to implement the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2016.

**Source:** Laws 2016, LB746, § 2; Laws 2017, LB225, § 9.

#### **43-4703 Terms, defined.**

For purposes of the Nebraska Strengthening Families Act:

(1) Age or developmentally appropriate means activities or items that are generally accepted as suitable for a child of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group and, in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child;

(2) Caregiver means a foster parent with whom a child in foster care has been placed or a designated official for a child-care institution in which a child in foster care has been placed;

(3) Child-care institution has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2016, and also includes the definition of residential child-caring agency as found in section 71-1926;

(4) Department means the Department of Health and Human Services;

(5) Foster family home has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2017, and also includes the definition as found in section 71-1901;

(6) Probation means the Office of Probation Administration; and

(7) Reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities.

**Source:** Laws 2016, LB746, § 3; Laws 2017, LB225, § 10.

#### **43-4704 Rights of child.**

Every child placed by the department in a foster family home or child-care institution shall be entitled to access to reasonable opportunities to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

**Source:** Laws 2016, LB746, § 4; Laws 2017, LB225, § 11.

**43-4706 Department; duties; contract requirements; caregiver; duties; written notice posted; normalcy plan; contents; normalcy report; contents.**

(1) The department shall ensure that each foster family home and child-care institution has policies consistent with this section and that such foster family home and child-care institution promote and protect the ability of children to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

(2) A caregiver shall use a reasonable and prudent parent standard in determining whether to give permission for a child to participate in extracurricular, enrichment, cultural, and social activities. The caregiver shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

(3) The department shall require, as a condition of each contract entered into by a child-care institution to provide foster care, the presence onsite of at least one official who, with respect to any child placed at the child-care institution, is designated to be the caregiver who is (a) authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities, (b) provided with training in how to use and apply the reasonable and prudent parent standard in the same manner as foster parents are provided training in section 43-4707, and (c) required to consult whenever possible with the child and staff members identified by the child in applying the reasonable and prudent parent standard.

(4) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, that all children placed at the child-care institution be notified verbally and in writing, in an age or developmentally appropriate manner, of the process for making a request to participate in age or developmentally appropriate activities and that a written notice of this process be posted in an accessible, public place in the child-care institution.

(5)(a) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, a written normalcy plan describing how the child-care institution will ensure that all children have access to age or developmentally appropriate activities to be filed with the department and a normalcy report regarding the implementation of the normalcy plan to be filed with the department annually by June 30. Such plans and reports shall not be required to be provided by child-care institutions physically located outside the State of Nebraska or psychiatric residential treatment facilities.

(b) The normalcy plan shall specifically address:

(i) Efforts to address barriers to normalcy that are inherent in a child-care institution setting;

(ii) Normalcy efforts for all children placed at the child-care institution, including, but not limited to, relationships with family, age or developmentally appropriate access to technology and technological skills, education and school stability, access to health care and information, and access to a sustainable and durable routine;

(iii) Procedures for developing goals and action steps in the child-care institution's case plan and case planning process related to participation in age

or developmentally appropriate activities for each child placed at the child-care institution;

(iv) Policies on staffing, supervision, permission, and consent to age or developmentally appropriate activities consistent with the reasonable and prudent parent standard;

(v) A list of activities that the child-care institution provides onsite and a list of activities in the community regarding which the child-care institution will make children aware, promote, and support access;

(vi) Identified accommodations and support services so that children with disabilities and special needs can participate in age or developmentally appropriate activities to the same extent as their peers;

(vii) The individualized needs of all children involved in the system;

(viii) Efforts to reduce disproportionate impact of the system and services on families and children of color and other populations; and

(ix) Efforts to develop a youth board to assist in implementing the reasonable and prudent parent standard in the child-care institution and promoting and supporting normalcy.

(c) The normalcy report shall specifically address:

(i) Compliance with each of the plan requirements set forth in subdivisions (b)(i) through (ix) of this subsection; and

(ii) Compliance with subsections (3) and (4) of this section.

(6) The department shall make normalcy plans and reports received from contracting child-care institutions pursuant to subsection (5) of this section and plans and reports from all youth rehabilitation and treatment centers pursuant to subsection (7) of this section available upon request to the Nebraska Strengthening Families Act Committee, the Nebraska Children's Commission, probation, the Governor, and electronically to the Health and Human Services Committee of the Legislature, by September 1 of each year.

(7) All youth rehabilitation and treatment centers shall meet the requirements of subsection (5) of this section.

**Source:** Laws 2016, LB746, § 6; Laws 2017, LB225, § 12.

#### **43-4707 Training for foster parents.**

The department shall adopt and promulgate rules and regulations regarding training for foster parents so that foster parents will be prepared adequately with the appropriate knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of the child and knowledge and skills related to applying the standard to decisions such as whether to allow the child to engage in extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one or more days and to decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, cultural, and social activities. The department shall also adopt and promulgate rules and regulations regarding training



for foster parents on recognizing human trafficking, including both sex trafficking and labor trafficking.

**Source:** Laws 2016, LB746, § 7; Laws 2017, LB225, § 13.

**43-4709 Parental rights; consultation with parent; documentation; family team meeting.**

(1) Nothing in the Nebraska Strengthening Families Act or the application of the reasonable and prudent parent standard shall affect the parental rights of a parent whose parental rights have not been terminated pursuant to section 43-292 with respect to his or her child.

(2) To the extent possible, a parent shall be consulted about the child's participation in age or developmentally appropriate activities in the planning process. The department shall document such consultation in the report filed pursuant to subsection (3) of section 43-285.

(3) The child's participation in extracurricular, enrichment, cultural, and social activities shall be considered at any family team meeting.

**Source:** Laws 2016, LB746, § 9; Laws 2017, LB225, § 14.

**43-4714 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Strengthening Families Act and shall revoke any rules or regulations inconsistent with the act by October 15, 2017.

**Source:** Laws 2016, LB746, § 14; Laws 2017, LB225, § 16.

**43-4715 Missing child; department and probation; duties.**

The department and probation shall establish procedures for the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement to appropriate third parties, which may include law enforcement agencies or persons engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public. Any information released to a third party under this section shall be subject to state and federal confidentiality laws and shall not include that the child is under the care, custody, or supervision of the department or under the supervision of probation. Such dissemination by probation shall be authorized by an order of a judge or court.

**Source:** Laws 2017, LB225, § 15.

**ARTICLE 48**

**JUDICIAL EMANCIPATION OF A MINOR**

Section

- 43-4801. Procedure.
- 43-4802. Petition authorized.
- 43-4803. Petition; contents.
- 43-4804. Hearing.
- 43-4805. Notice; service.
- 43-4806. Summons to appear; service.
- 43-4807. Hearing on merits of petition.
- 43-4808. Objection to petition.
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- 43-4810. Judgment of emancipation; effect; certified copy; use by third party.

## Section

43-4811. Effect on prosecution of criminal offense.

43-4812. Rescission; motion; grounds; when granted; hearing; notice; effect on prior order of custody, parenting time, or support.

**43-4801 Procedure.**

Sections 43-4801 to 43-4812 provide a procedure for judicial emancipation of a minor.

**Source:** Laws 2018, LB714, § 1.  
Effective date July 19, 2018.

**43-4802 Petition authorized.**

A minor who is at least sixteen years of age, who is married or living apart from his or her parents or legal guardian, and who is a legal resident may file a petition in the district court of his or her county of residence for a judgment of emancipation. The petition shall be signed and verified by the minor.

**Source:** Laws 2018, LB714, § 2.  
Effective date July 19, 2018.

**43-4803 Petition; contents.**

A petition for emancipation filed pursuant to section 43-4802 shall state:

- (1) The name, age, and address of the minor;
- (2) The names and addresses of the parents of the minor, if known;
- (3) The name and address of any legal guardian of the minor, if known;
- (4) If the name or address of a parent or legal guardian is unknown, the name and address of the child's nearest known relative residing within this state;
- (5) Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding, if known;
- (6) The state, county, and case number of any court case in which an order of support has been entered, if known;
- (7) That the minor is seeking a judgment of emancipation;
- (8) That the minor is filing the petition as a free and voluntary act; and
- (9) Specific facts to support the petition, including:
  - (a) That the minor willingly lives apart from his or her parents or legal guardian;
  - (b) That the minor is able to support himself or herself without financial assistance, or, in the alternative, the minor has no parent, legal guardian, or custodian who is providing support;
  - (c) That the minor is mature and knowledgeable to manage his or her affairs without the guidance of a parent or legal guardian;
  - (d) That the minor has demonstrated an ability and commitment to obtain and maintain education, vocational training, or employment;
  - (e) The reasons why emancipation would be in the best interests of the minor; and

(f) The purposes for which emancipation is requested.

**Source:** Laws 2018, LB714, § 3.  
Effective date July 19, 2018.

#### **43-4804 Hearing.**

Upon the filing of a petition for emancipation, the court shall fix a time for a hearing on the petition. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

**Source:** Laws 2018, LB714, § 4.  
Effective date July 19, 2018.

#### **43-4805 Notice; service.**

(1) Upon filing a petition pursuant to section 43-4804, and at least thirty days prior to the hearing date, the petitioner shall serve a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, upon:

(a) The parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) The legal custodian of the minor, if any.

(2) Service and summons shall be made in accordance with section 25-505.01.

(3) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made (a) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (b) by publication, or (c) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

**Source:** Laws 2018, LB714, § 5.  
Effective date July 19, 2018.

#### **43-4806 Summons to appear; service.**

Upon filing the petition, a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, shall be served:

(1)(a) Upon the parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) Upon the legal custodian of the minor, if any; or

(2) By publication pursuant to section 25-519, if service pursuant to subdivision (1) of this section is not possible.

**Source:** Laws 2018, LB714, § 6.  
Effective date July 19, 2018.

#### **43-4807 Hearing on merits of petition.**

The court shall hold a hearing on the merits of the petition no sooner than forty-five days after the date of filing but within sixty days after the date of its filing. The petitioner shall notify by certified mail the petitioner's parent or legal guardian or the petitioner's nearest known relative residing within the state, whichever is given notice under section 43-4806, if any, and the petitioner's legal custodian, if any, of the time, date, and place of the hearing at least thirty days prior to the hearing date. Proof of such notice shall be filed prior to the hearing on the petition. For good cause shown, the court may continue the initial emancipation hearing.

**Source:** Laws 2018, LB714, § 7.  
Effective date July 19, 2018.

#### **43-4808 Objection to petition.**

The minor's parent or legal guardian and the minor's legal custodian may file an objection to the petition for emancipation within thirty days of service of the notice of the hearing.

**Source:** Laws 2018, LB714, § 8.  
Effective date July 19, 2018.

#### **43-4809 Burden of proof; advisement by court; judgment of emancipation.**

(1) The minor has the burden of proving by clear and convincing evidence that the requirements for ordering emancipation under this section have been met. Prior to entering a judgment of emancipation, the court shall advise the minor of the consequences of emancipation, including, but not limited to, the benefits and services available to an emancipated minor and the risks involved with being emancipated. Such advisements shall include, at a minimum, the words to the following effect:

(a) If you become emancipated, you will have some of the rights that come with adulthood. These rights include: Handling your own affairs; living where you choose; entering into contracts; keeping and spending your money; making decisions regarding your own health care, medical care, dental care, and mental health care, without parental knowledge; enlisting in the military without your parent's consent; marrying without your parent's consent; applying for public assistance; suing someone or being sued; enrolling in school or college; and owning real property;

(b) Even if you are emancipated, you still must: Stay in school as required by Nebraska law; be subject to child labor laws and work permit rules limiting the number of hours you can work; and be of legal age to consume alcohol; and

(c) When you become emancipated: You lose your right to have financial support for basic living expenses for food, clothing, and shelter, and health care paid for by your parents or guardian; your parents or guardian will no longer be legally or financially responsible if you injure someone; and being emancipated does not automatically make you eligible for public assistance or benefits.

(2) If, after hearing, the court determines that emancipation is in the best interests of the minor and that the minor understands his or her rights and responsibilities under sections 43-4801 to 43-4812 as an emancipated minor, the court shall enter a judgment of emancipation. In making its determination regarding the petition for emancipation, the court shall determine whether the

petitioner has proven each of the facts set forth in subdivision (9) of section 43-4803.

**Source:** Laws 2018, LB714, § 9.  
Effective date July 19, 2018.

**43-4810 Judgment of emancipation; effect; certified copy; use by third party.**

(1) A judgment of emancipation removes the disability of minority insofar as that disability may affect: (a) Establishment of his or her own residence; (b) incurring indebtedness or contractual obligations of any kind; (c) consenting to medical, dental, or psychiatric care without the consent, knowledge, or liability of parents or a guardian; (d) enlisting in the military without a parent's or guardian's consent; (e) marrying without a parent's or guardian's consent; (f) being individually eligible for public assistance; (g) the litigation and settlement of controversies; (h) enrolling in any school or college; and (i) acquiring, encumbering, and conveying property or any interest therein. For the purposes described in this subsection, the minor shall be considered in law as an adult and any obligation or benefit he or she incurs is enforceable by and against such minor without regard to his or her minority.

(2) A minor emancipated by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, gambling, use of tobacco, and other health and safety regulations relevant to the minor because of his or her age.

(3) The emancipated minor shall be provided a certified copy of the judgment of emancipation at the time the judgment is entered. Upon presentation of the judgment of emancipation, a third party shall be allowed to retain a copy of the same as proof of the minor's ability to act as stated in this section.

(4) Unless otherwise provided in the judgment of emancipation, the judgment of emancipation shall explicitly suspend any order regarding custody, parenting time, or support of the minor and be reported by the district court clerk to the jurisdiction that issued such order.

**Source:** Laws 2018, LB714, § 10.  
Effective date July 19, 2018.

**43-4811 Effect on prosecution of criminal offense.**

An emancipated minor shall not be considered an adult for prosecution of a criminal offense.

**Source:** Laws 2018, LB714, § 11.  
Effective date July 19, 2018.

**43-4812 Rescission; motion; grounds; when granted; hearing; notice; effect on prior order of custody, parenting time, or support.**

(1) A motion for rescission may be filed by any interested person or public agency in order to rescind a judgment of emancipation on the following grounds:

- (a) The minor has become indigent and has insufficient means of support; or
- (b) The judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(2) The motion for rescission shall be filed in the district court in which the petition for emancipation was filed. The motion for rescission of a judgment of emancipation shall be granted if it is proven:

(a) That rescinding the judgment of emancipation is in the best interests of the emancipated minor; and

(b)(i) That the minor has become indigent and has insufficient means of support; or

(ii) That the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(3) Upon the filing of a motion for rescission, the court shall fix a time for a hearing on the motion. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such motion unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

(4)(a) Upon filing a motion pursuant to subsection (3) of this section, and at least thirty days prior to the hearing date, the movant shall serve a notice of filing, together with a copy of the motion for rescission and a summons to appear at the hearing, upon:

(i) The emancipated person;

(ii) The parents or the person who was the legal guardian of the emancipated person or, if the parents or legal guardian cannot be found, the nearest known relative of the emancipated person residing within the state, if any; and

(iii) The legal custodian of the emancipated person prior to emancipation, if any.

(b) Service and summons shall be made in accordance with section 25-505.01.

(c) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made (i) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (ii) by publication, or (iii) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

(d) The emancipated minor may file a written response objecting to the motion to rescind emancipation within thirty days after service of the notice of the hearing.

(5) If, after hearing, the court determines by clear and convincing evidence that rescinding the judgment of emancipation is in the best interests of the minor because the minor has become indigent and has insufficient means of support, or because the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information, the court shall rescind the judgment of emancipation.

(6) If a prior order regarding custody, parenting time, or support of the minor was suspended by the judgment of emancipation, the order rescinding the judgment of emancipation shall be reported by the district court clerk to the jurisdiction that issued such order and shall serve to reinstate such prior order of custody, parenting time, or support.

(7) The parents or legal guardian or legal custodian of a minor emancipated by court order are not liable for any debts incurred by the minor child during the period of emancipation.

(8) Rescinding a judgment of emancipation does not affect an obligation, responsibility, right, or interest that arose during the period of time that the judgment of emancipation was in effect.

**Source:** Laws 2018, LB714, § 12.  
Effective date July 19, 2018.





## INSURANCE

# CHAPTER 44 INSURANCE

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## ARTICLE 1

### POWERS OF DEPARTMENT OF INSURANCE

Section

- 44-102.01. Insurance; service contract excluded.
- 44-113. Department; report; contents.
- 44-114. Department; fees for services.
- 44-154. Director; information; disclosure; confidentiality; privilege.
- 44-165. Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

#### **44-102.01 Insurance; service contract excluded.**

For purposes of Chapter 44, insurance does not include a service contract. For purposes of this section, service contract means (1) a motor vehicle service contract as defined in section 44-3521 or (2) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, failure, malfunction, inoperability, inherent defect, or failure of an inspection to detect the likelihood of failure.

**Source:** Laws 1990, LB 1136, § 91; Laws 2011, LB535, § 10.

#### **44-113 Department; report; contents.**

The Department of Insurance shall transmit to the Governor, ten days prior to the opening of each session of the Legislature, a report of its official transactions, containing in a condensed form the statements made to the department by every insurance company authorized to do business in this state pursuant to Chapter 44, as audited and corrected by it, arranged in tabular form or in abstracts, in classes according to the kind of insurance, which report shall also contain (1) a statement of all insurance companies authorized to do business in this state during the year ending December 31 next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business and kinds of insurance in which they are engaged respectively; and (2) a statement of the insurance companies whose business has been closed since making the last report, and the reasons for closing such businesses, with the amount of their assets and liabilities, so far as the amount of their assets and liabilities are known or can be ascertained by the department. The report shall also be transmitted electronically to the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by making a request for it to the director. The department may transmit the

report by electronic format through the portal established under section 84-1204 after notification of such type of delivery is given to the recipient. The department shall maintain the report in a form capable of accurate duplication on paper.

**Source:** Laws 1913, c. 154, § 18, p. 405; R.S.1913, § 3154; Laws 1919, c. 190, tit. V, art. III, § 11, p. 583; C.S.1922, § 7755; C.S.1929, § 44-211; R.S.1943, § 44-113; Laws 1969, c. 359, § 2, p. 1268; Laws 1979, LB 322, § 14; Laws 2003, LB 216, § 1; Laws 2012, LB719, § 1; Laws 2012, LB782, § 53.

#### **44-114 Department; fees for services.**

In addition to any other fees and charges provided by law, the following shall be due and payable to the Department of Insurance: (1) For filing the documents, papers, statements, and information required by law upon the organization of domestic or the entry of foreign or alien insurers, statistical agents, or advisory organizations, three hundred dollars; (2) for filing each amendment of articles of incorporation, twenty dollars; (3) for filing restated articles of incorporation, twenty dollars; (4) for renewing each certificate of authority of insurers, statistical agents, or advisory organizations, one hundred dollars, except domestic assessment associations, which shall pay twenty dollars; (5) for issuance of an amended certificate of authority, one hundred dollars; (6) for filing a certified copy of articles of merger involving a domestic or foreign insurance corporation holding a certificate of authority to transact insurance business in this state, fifty dollars; (7) for filing an annual statement, two hundred dollars; (8) for each certificate of valuation, deposit, or compliance or other certificate for whomsoever issued, five dollars; (9) for filing any report which may be required by the department from any unincorporated mutual association, no fee shall be due; (10) for copying official records or documents, fifty cents per page; and (11) for a preadmission review of documents required to be filed for the admission of a foreign insurer or for the organization and licensing of a domestic insurer other than an assessment association, a nonrefundable fee of one thousand dollars.

**Source:** Laws 1913, c. 154, § 19, p. 406; R.S.1913, § 3155; Laws 1919, c. 190, tit. V, art. III, § 12, p. 584; C.S.1922, § 7756; C.S.1929, § 44-212; Laws 1935, c. 101, § 1, p. 330; C.S.Supp.,1941, § 44-212; R.S.1943, § 44-114; Laws 1955, c. 168, § 2, p. 478; Laws 1965, c. 250, § 1, p. 708; Laws 1969, c. 359, § 3, p. 1269; Laws 1969, c. 360, § 1, p. 1282; Laws 1977, LB 333, § 1; Laws 1980, LB 481, § 31; Laws 1984, LB 801, § 46; Laws 1989, LB 92, § 10; Laws 1991, LB 233, § 42; Laws 2003, LB 216, § 2; Laws 2012, LB887, § 1.

#### **44-154 Director; information; disclosure; confidentiality; privilege.**

(1) Unless otherwise expressly prohibited by Chapter 44, the director may:

(a) Share documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, with other state, federal, foreign, and international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees to maintain the

confidential or privileged status of the document, material, or other information;

(b) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, and the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged any document, material, or other information received pursuant to an information-sharing agreement entered into pursuant to this section with notice or the understanding that the document, material, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing sharing and use of information consistent with this subsection.

(2)(a) All confidential and privileged information obtained by or disclosed to the director by other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information shall:

(i) Be confidential and privileged;

(ii) Not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09;

(iii) Not be subject to subpoena; and

(iv) Not be subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding the provisions of subdivision (2)(a) of this section, the director may use the documents, materials, or other information in any regulatory or legal action brought by the director.

(3) The director, and any other person while acting under the authority of the director who has received information from other state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section, may not, and shall not be required to, testify in any private civil action concerning such information.

(4) Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information received from state, federal, foreign, or international regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the Bank for International Settlements, or the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section as a result of disclosure to the director or as a result of information sharing authorized by this section.

**Source:** Laws 2001, LB 52, § 26; Laws 2012, LB887, § 2.

**44-165 Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.**

(1)(a) A financial conglomerate may submit to the jurisdiction of the Director of Insurance for supervision on a consolidated basis under this section. Supervision under this section shall be in addition to all statutory and regulatory requirements imposed on domestic insurers and shall be for the purpose of determining how the operations of the financial conglomerate impact insurance operations.

(b) For purposes of this section:

(i) Control has the same meaning as in section 44-2121; and

(ii) Financial conglomerate means either an insurance company domiciled in Nebraska or a person established under the laws of the United States, any state, or the District of Columbia which directly or indirectly controls an insurance company domiciled in Nebraska. Financial conglomerate includes the person applying for supervision under this section and all entities, whether insurance companies or otherwise, to the extent the entities are controlled by such person.

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

(3)(a) The director may adopt and promulgate rules and regulations for supervision of a financial conglomerate, including all persons controlled by a financial conglomerate, that will permit the director to assess at the level of the financial conglomerate the financial situation of the financial conglomerate, including solvency, risk concentration, and intra-group transactions.

(b) Such rules and regulations shall require the financial conglomerate to:

(i) Have in place sufficient capital adequacy policies at the level of the financial conglomerate;

(ii) Report to the director at least annually any significant risk concentration at the level of the financial conglomerate;

(iii) Report to the director at least annually all significant intra-group transactions of regulated entities within a financial conglomerate. Such reporting shall be in addition to all reports required under any other provision of Chapter 44; and

(iv) Have in place at the level of the financial conglomerate adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(c) In adopting and promulgating the rules and regulations, the director:

(i) Shall consider the rules and regulations that may be adopted by a member state of the European Union, the European Union, or any other country for the supervision of financial conglomerates;

(ii) Shall require the filing of such information as the director may determine;

(iii) Shall include standards and processes for effective qualitative group assessment, quantitative group assessment including capital adequacy, affiliate transaction, and risk concentration assessment, risks and internal capital assessments, disclosure requirements, and investigation and enforcement powers;

(iv) Shall state that supervision of financial conglomerates concerns how the operations of the financial conglomerate impact the insurance operations;

(v) Shall adopt an application fee in an amount not to exceed the amount necessary to recover the cost of review and analysis of the application; and

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(b) If it appears to the director that any financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, has committed or is about to commit a violation of this section or the rules and regulations adopted and promulgated under this section, the director may apply to the district court of Lancaster County for an order enjoining such financial conglomerate, director, officer, employee, or agent from violating or continuing to violate this section or the rules and regulations adopted and promulgated under this section and for such other equitable relief as the nature of the case and the interest of the financial conglomerate's policyholders, creditors, or the public may require.

(c)(i) Any financial conglomerate that fails, without just cause, to provide information which may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the financial conglomerate demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the financial conglomerate.

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

(iii) Any violation of this section or the rules and regulations adopted and promulgated under this section shall be an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the

gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

(f) If it appears to the director that any person has committed a violation of this section or the rules and regulations adopted and promulgated under this section which so impairs the financial condition of a domestic insurer that submits to the jurisdiction of the director under this section as to threaten insolvency or make the further transaction of business by such financial conglomerate hazardous to its policyholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

(g) If it appears to the director that any person that submits to the jurisdiction of the director under this section has committed a violation of this section or the rules and regulations adopted and promulgated under this section which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(ii) Any director, officer, employee, or agent of a financial conglomerate that submits to the jurisdiction of the director under this section who willfully violates this section or the rules and regulations adopted and promulgated under this section or who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(iii) Any person aggrieved by any act, determination, order, or other action of the director pursuant to this section or the rules and regulations adopted and promulgated under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(iv) Any person aggrieved by any failure of the director to act or make a determination required by this section or the rules and regulations adopted and promulgated under this section may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

(5)(a) The director may contract with such qualified persons as the director deems necessary to allow the director to perform any duties and responsibilities under this section.

(b) The reasonable expenses of supervision of a financial conglomerate under this section shall be fixed and determined by the director who shall collect the same from the supervised financial conglomerate. The financial conglomerate shall reimburse the amount upon presentation of a statement by the director. All money collected by the director for supervision of financial conglomerates pursuant to this section shall be remitted in accordance with section 44-116.

(c) All information, documents, and copies thereof obtained by or disclosed to the director pursuant to this section shall be held by the director in accordance with sections 44-154 and 44-2138.

**Source:** Laws 2008, LB855, § 50; Laws 2014, LB700, § 14.

#### Cross References

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

**Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act**, see section 44-4862.

**Unfair Insurance Trade Practices Act**, see section 44-1521.

## ARTICLE 2

### LINES OF INSURANCE, ORGANIZATION OF COMPANIES

#### Section

- 44-201. Insurance; lines; enumerated.
- 44-205.01. Articles of incorporation; contents.
- 44-206. Insurance companies; formation; notice; publication.
- 44-208.02. Insurance companies; organization; subscriptions to stock; permit.
- 44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.
- 44-224.01. Reinsurance, merger, consolidation; terms, defined.
- 44-224.04. Domestic stock company merger; contract; approval.

#### **44-201 Insurance; lines; enumerated.**

An insurance corporation may be formed for the following purposes or may insure the following lines:

(1) **LIFE INSURANCE.** Insurance upon lives of persons, including endowments and annuities, and every insurance pertaining thereto and disability benefits, except that life insurance shall not include variable life insurance specified in subdivision (2) of this section and variable annuities specified in subdivision (3) of this section;

(2) **VARIABLE LIFE INSURANCE.** Insurance on the lives of individuals, the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such insurance;

(3) **VARIABLE ANNUITIES.** Insurance policies issued on an individual or group basis by which an insurer promises to pay a variable sum of money either in a lump sum or periodically for life or for some other specified period;

(4) **SICKNESS AND ACCIDENT INSURANCE.** Insurance against loss or expense resulting from the sickness of the insured, from bodily injury or death of the insured by accident, or both, and every insurance pertaining thereto;



(5) **PROPERTY INSURANCE.** Insurance against loss or damage, including consequential loss or damage, to real or personal property of every kind and any interest in such property from any and all hazards or causes, except that property insurance shall not include title insurance specified in subdivision (15) of this section and marine insurance specified in subdivision (18) of this section;

(6) **CREDIT PROPERTY INSURANCE.** Insurance against loss or damage to personal property used as collateral for securing a loan or to personal property purchased pursuant to a credit transaction, but only insofar as it applies to property sold to or pledged by individual consumers for personal use;

(7) **GLASS INSURANCE.** Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(8) **BURGLARY AND THEFT INSURANCE.** Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing;

(9) **BOILER AND MACHINERY INSURANCE.** Insurance against any liability and loss or damage to life, person, property, or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus;

(10) **LIABILITY INSURANCE.** Insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in subdivision (11) of this section;

(11) **WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE.** Insurance against the legal liability of any employer for the death or disablement of or injury to an employee whether imposed by common law or statute or assumed by contract, except that workers' compensation and employers liability insurance shall not include liability insurance specified in subdivision (10) of this section;

(12) **VEHICLE INSURANCE.** Insurance against any loss or damage to any land vehicle, other than railroad rolling stock, or any draft animal, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle or animal, together with insurance against accidental injury to or death of any person, irrespective of legal liability of the insured, if such insurance is issued as an incidental part of insurance on the vehicle or draft animal;

(13) **FIDELITY INSURANCE.** Insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(14) **SURETY INSURANCE.** Insurance guaranteeing the performance of contracts other than insurance policies or guaranteeing and executing all bonds, undertakings, and contracts of suretyship, except that surety insurance shall not include title insurance specified in subdivision (15) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(15) **TITLE INSURANCE.** (a) Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (i) liens, encumbrances upon, defects in, or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting, or otherwise insuring by a title insurer the correctness of searches relating to the title to real property and (ii) defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurer the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property; or

(b) Insurance guaranteeing or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures or the existence or nonexistence of protected purchaser status under the Uniform Commercial Code;

(16) **CREDIT INSURANCE.** Insurance against loss or damage from the failure of persons indebted to or to become indebted to the insured to meet existing or contemplated liabilities, including agreements to purchase uncollectible debts, except that credit insurance shall not include mortgage guaranty insurance specified in subdivision (17) of this section and financial guaranty insurance specified in subdivision (19) of this section;

(17) **MORTGAGE GUARANTY INSURANCE.** Insurance against financial loss by lenders by reason of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate;

(18) **MARINE INSURANCE.** Insurance against loss or damage, including consequential loss or damage, to vessels, craft, aircraft, automobiles, and vehicles of every kind as well as goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests, and all kinds of property and interests therein in respect to, pertaining to, or in connection with any or all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas, or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incidental thereto; including marine builders' risks and war risks; and against loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit, or transportation insurance, including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of such primary insurance, but not including life insurance or surety bonds; but, except as specified in this subdivision, marine

insurance shall not include insurance against loss by reason of bodily injury to the person;

(19) FINANCIAL GUARANTY INSURANCE. (1) Insurance issued in the form of a surety bond, insurance policy, or, when issued by an insurer, an indemnity contract and any guaranty similar to the foregoing types, against financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(a) Failure of any obligor on any debt instrument or other monetary obligation, including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract, to pay when due principal, interest, premium, dividend, or purchase price of or on such instrument or obligation, when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(b) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;

(c) Changes in the rate of exchange of currency;

(d) Inconvertibility of one currency into another for any reason or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority;

(e) Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(f) Other events which the Director of Insurance determines are substantially similar to any of the events described in subdivisions (a) through (e) of this subdivision.

(2) Financial guaranty insurance shall not include:

(a) Insurance of any loss resulting from any event described in subdivisions (19)(1)(a) through (e) of this section if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event;

(ii) A failure of or deficiency in the operation of equipment; or

(iii) An inability to extract or recover a natural resource;

(b) Any individual or schedule public official bond;

(c) Any contract bond, including bid, payment, or maintenance bond, or a performance bond when the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation;

(d) Any court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including waiver, probate, open estate, and life tenant bond;

(e) Any bond running to the federal, state, county, or municipal government or other political subdivision as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege;

(f) Any loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization;

(g) Any lease, purchase, and sale or concessionaire surety bond;

(h) Credit unemployment insurance, meaning insurance on a debtor, in connection with a specific loan or other credit transaction, to provide payments to creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed;

(i) Credit insurance, meaning insurance indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business;

(j) Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(k) Funding agreements;

(l) Synthetic guaranteed investment contracts;

(m) Guaranteed interest contracts;

(n) Deposit administration contracts;

(o) Surety insurance as specified in subdivision (14) of this section and mortgage guaranty insurance as specified in subdivision (17) of this section;

(p) Indemnity contracts or similar guaranties to the extent that they are not otherwise limited or proscribed by Chapter 44 in which a life insurer:

(i) Guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than fifty percent, other than a financial guaranty insurance corporation, except that:

(A) To the extent that any such obligations or indebtedness are backed by specific assets, such assets shall at all times be owned by the insurer or the subsidiary; and

(B) In the case of the guaranty of the obligations or indebtedness of the subsidiary that is not backed by specific assets of the life insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) Guaranties obligations or indebtedness, including the obligation to substitute assets where appropriate, with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary if such assets have been:

(A) Acquired by a special purpose entity, the sole purpose of which is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by such assets; or

(B) Sold to an independent third party; or

(iii) Guaranties obligations or indebtedness of an employee or agent of the life insurer; and

(q) Any other form of insurance covering risks which the director determines to be substantially similar to any of the risks described in subdivisions (a) through (p) of this subdivision; and

(20) MISCELLANEOUS INSURANCE. Insurance upon any risk, including but not limited to legal expense insurance and mechanical breakdown insurance, not included within subdivisions (1) through (19) of this section, and

which is a proper subject for insurance, not prohibited by law or contrary to sound public policy, to be determined by the Department of Insurance.

**Source:** Laws 1913, c. 154, § 78, p. 426; R.S.1913, § 3215; Laws 1917, c. 77, § 1, p. 183; Laws 1919, c. 190, tit. V, art. V, § 1, p. 606; C.S.1922, § 7814; Laws 1925, c. 124, § 1, p. 326; Laws 1927, c. 136, § 1, p. 374; C.S.1929, § 44-401; Laws 1935, c. 96, § 1, p. 319; C.S.Supp.,1941, § 44-401; R.S.1943, § 44-201; Laws 1949, c. 138, § 1, p. 358; Laws 1965, c. 253, § 1, p. 712; Laws 1967, c. 261, § 18, p. 693; Laws 1967, c. 262, § 1, p. 699; Laws 1971, LB 767, § 1; Laws 1973, LB 234, § 1; Laws 1978, LB 767, § 1; Laws 1989, LB 92, § 41; Laws 1991, LB 235, § 2; Laws 2004, LB 1047, § 2; Laws 2015, LB180, § 1.

#### **44-205.01 Articles of incorporation; contents.**

(1) The articles of incorporation filed pursuant to section 44-205 shall state (a) the corporate name, which shall not so nearly resemble the name of an existing corporation as, in the opinion of the Director of Insurance, will mislead the public or cause confusion, (b) the place in Nebraska where the registered office and principal office will be located, (c) the purposes, which shall be restricted to the kind or kinds of insurance to be undertaken, such other kinds of business which it shall be empowered to undertake, and the powers necessary and incidental to carrying out such purposes, and (d) such other particulars as are required by the Nebraska Model Business Corporation Act and Chapter 44.

(2) The articles of incorporation may state such other particulars as are permitted by the Nebraska Model Business Corporation Act and Chapter 44, including provisions relating to the management of the business and regulation of the affairs of the corporation and defining, limiting, and regulating the powers of the corporation, its board of directors, and the shareholders of a stock corporation or the members of a mutual or assessment corporation.

**Source:** Laws 1957, c. 178, § 1, p. 611; Laws 1972, LB 1336, § 2; Laws 1989, LB 92, § 47; Laws 1995, LB 109, § 215; Laws 2014, LB749, § 280.

#### **Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

#### **44-206 Insurance companies; formation; notice; publication.**

Within the earlier of thirty days after receiving the certificate of authority to transact business or four months after filing its articles of incorporation, such corporation shall publish a notice in some legal newspaper, which notice shall contain the same information, as far as practicable, as that required under the Nebraska Model Business Corporation Act.

**Source:** Laws 1913, c. 154, § 81, p. 429; R.S.1913, § 3218; Laws 1919, c. 190, tit. V, art. V, § 4, p. 609; Laws 1921, c. 305, § 1, p. 963; C.S.1922, § 7817; C.S.1929, § 44-404; R.S.1943, § 44-206; Laws 1989, LB 92, § 48; Laws 1995, LB 109, § 216; Laws 2014, LB749, § 281.

#### **Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**44-208.02 Insurance companies; organization; subscriptions to stock; permit.**

If the Director of Insurance approves the forms of subscriptions for capital stock or the forms of application for membership or for insurance, the corporate surety on the bond required by section 44-208.01, and, in the case of stock insurers, the application to solicit subscriptions for stock, he or she shall deliver to the promoter or incorporators a permit in the name of the corporation authorizing it to complete its organization. Upon receiving such permit, the corporation shall have authority to solicit subscriptions and payments for capital stock if a stock insurer and applications and premiums or advance assessments for insurance if other than a stock insurer and to exercise such powers, subject to the limitations imposed by the Nebraska Model Business Corporation Act and Chapter 44, as may be necessary and proper in completing its organization and qualifying for a license to transact the kind or kinds of insurance proposed in its articles of incorporation. No corporation shall issue policies or enter into contracts of insurance until it receives a certificate of authority permitting it to do so.

**Source:** Laws 1957, c. 178, § 3, p. 613; Laws 1989, LB 92, § 51; Laws 1995, LB 109, § 217; Laws 2014, LB749, § 282.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.**

The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2,102.

**Source:** Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2; Laws 2014, LB749, § 283.

**44-224.01 Reinsurance, merger, consolidation; terms, defined.**

For purposes of sections 44-224.01 to 44-224.10, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance or his or her authorized representative;

(2) Policyholders shall mean the members of mutual insurance companies, the members of assessment associations, and the subscribers to reciprocal insurance exchanges;

(3) Merger or contract of merger shall mean a merger or consolidation agreement between stock insurance companies as authorized by the Nebraska Model Business Corporation Act;

(4) Consolidation or contract of consolidation shall mean a merger or consolidation agreement between companies operating on other than the stock plan of insurance; and

(5) Bulk reinsurance or contract of bulk reinsurance shall mean an agreement whereby one company cedes by an assumption reinsurance agreement fifty percent or more of its risks and business to another company.

**Source:** Laws 1957, c. 180, § 1, p. 620; Laws 1969, c. 359, § 10, p. 1271; Laws 1989, LB 92, § 72; Laws 1995, LB 109, § 218; Laws 2014, LB749, § 284.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**44-224.04 Domestic stock company merger; contract; approval.**

Any domestic stock insurance company may merge with another stock insurer after the contract of merger is approved by the director. The director shall not approve any such contract of merger unless the interests of the policyholders or shareholders of both parties thereto are properly protected. If the director does not approve the contract of merger, he or she shall issue a written order of disapproval setting forth his or her findings. After having obtained the approval of the director, the contract of merger shall be consummated in the manner set forth in the Nebraska Model Business Corporation Act for the merger or consolidation of stock corporations.

**Source:** Laws 1957, c. 180, § 4, p. 621; Laws 1969, c. 362, § 1, p. 1286; Laws 1976, LB 916, § 1; Laws 1989, LB 92, § 74; Laws 1995, LB 109, § 219; Laws 2014, LB749, § 285.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**ARTICLE 3**

**GENERAL PROVISIONS RELATING TO INSURANCE**

Section	
44-301.	Insurance companies; corporation laws apply; exceptions.
44-309.	Pollutant exclusion; exception for bodily injury.
44-310.	Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.
44-311.	Health care sharing ministry; treatment under insurance laws.
44-312.	Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.
44-313.	Insurer; contract for pharmacist professional services; authorized.
44-314.	City or county offering individual or family health insurance to first responders; prohibited acts.

## Section

- 44-361. Rebates; prohibited; activities not considered a rebate.  
 44-361.01. Rebates; circumventing; presumptions.  
 44-371. Annuity contract; insurance proceeds and benefits; exempt from claims of creditors; exceptions.  
 44-3,143. Life insurance policy proceeds; payment of interest; when.  
 44-3,144. Health care coverage of children; terms, defined.  
 44-3,159. Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

**44-301 Insurance companies; corporation laws apply; exceptions.**

The Nebraska Model Business Corporation Act, except as otherwise provided in Chapter 44, shall apply to all domestic incorporated insurance companies so far as the act is applicable or pertinent to and not in conflict with other provisions of the law relating to such companies. An assessment association that has accumulated and continues to maintain (1) reserves and (2) surplus or contingency funds at least equal to those required of a mutual insurance company shall, unless otherwise provided by law, be deemed to have all the powers and privileges in transacting its business and managing its affairs as those possessed by a mutual insurance company qualified to transact the same line or lines of insurance as the assessment association.

**Source:** Laws 1913, c. 154, § 30, p. 412; R.S.1913, § 3166; Laws 1919, c. 190, tit. V, art. IV, § 1, p. 590; C.S.1922, § 7766; C.S.1929, § 44-301; R.S.1943, § 44-301; Laws 1955, c. 172, § 1, p. 488; Laws 1989, LB 92, § 92; Laws 1995, LB 109, § 220; Laws 2014, LB749, § 286.

## Cross References

Nebraska Model Business Corporation Act, see section 21-201.

**44-309 Pollutant exclusion; exception for bodily injury.**

An exclusion in a homeowner's or owner's, landlord's, and tenant's policy of insurance for loss arising out of the discharge, dispersal, release, or escape of pollutants shall include an exception to the exclusion for bodily injury sustained within a building and caused by smoke, fumes, vapor, or soot produced by or originating from a heating system or ventilation system. This section applies to policies issued or delivered in this state on or after January 1, 2015.

**Source:** Laws 2014, LB876, § 1.

**44-310 Individual sickness and accident or medicare supplement policy; death of insured; refund of unearned premium.**

In the event of the death of the insured of an individual sickness and accident or medicare supplement policy, the insurer, upon receipt of a request for a pro rata refund by a party legally entitled to claim such a refund, shall refund the unearned premium prorated to the month of the insured's death if the request has been made within one year after the insured's death. The refund of the premium and termination of the coverage shall be without prejudice to any claim originating prior to the date of the insured's death.

**Source:** Laws 2014, LB735, § 1.

**44-311 Health care sharing ministry; treatment under insurance laws.**



(1) A health care sharing ministry shall not be considered to be engaging in the business of insurance for purposes of the insurance laws of this state.

(2) For purposes of this section, health care sharing ministry means a faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code which:

(a) Limits its participants to those who are of a similar faith;

(b) Acts as a facilitator among participants who have financial or medical needs and matches those participants with other participants with the present ability to assist those with financial or medical needs in accordance with criteria established by the health care sharing ministry;

(c) Provides for the financial or medical needs of a participant through contributions from one participant to another;

(d) Provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants;

(e) Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution;

(f) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads, in substance:

**IMPORTANT NOTICE.** This organization is not an insurance company, and its product should never be considered insurance. If you join this organization instead of purchasing health insurance, you will be considered uninsured. By the terms of this agreement, whether anyone chooses to assist you with your medical bills as a participant of this organization will be totally voluntary, and neither the organization nor any participant can be compelled by law to contribute toward your medical bills. Regardless of whether you receive payment for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills. This organization is not regulated by the Nebraska Department of Insurance. You should review this organization's guidelines carefully to be sure you understand any limitations that may affect your personal medical and financial needs;

(g) Has participants which retain participation even after they develop a medical condition; and

(h) Conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

**Source:** Laws 2014, LB700, § 12.

**44-312 Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties.**

(1) For purposes of this section:

(a) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care provider 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 health care provider at another site for medical evaluation, and telemonitoring; and

(b) 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 health care provider for analysis and storage.

(2) Any insurer offering (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (b) any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, or (c) any self-funded employee benefit plan to the extent not preempted by federal law, shall provide upon request to a policyholder, certificate holder, or health care provider a description of the telehealth and telemonitoring services covered under the relevant policy, certificate, contract, or plan.

(3) The description shall include:

(a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs;

(b) Exclusions or limitations for telehealth and telemonitoring coverage, including, but not limited to, any limitation on coverage for transmission costs;

(c) Requirements for the licensing status of health care providers providing telehealth and telemonitoring services; and

(d) Requirements for demonstrating compliance with the signed written statement requirement in section 71-8505.

**Source:** Laws 2015, LB257, § 1.

#### **44-313 Insurer; contract for pharmacist professional services; authorized.**

(1) For purposes of this section:

(a) Insurer means any insurer offering any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and any self-funded employee benefit plan to the extent not preempted by federal law; and

(b) Pharmacist professional services means professional services provided to patients by licensed pharmacists as allowed by law.

(2) On and after January 1, 2016, an insurer may contract with a licensed pharmacist for pharmacist professional services. Nothing in this section shall prohibit an insurer from contracting with a licensed pharmacist who is not employed or associated with a pharmacy. Nothing in this section shall require a licensed pharmacist to contract with an insurer for pharmacist professional services.

**Source:** Laws 2015, LB342, § 1.

#### **44-314 City or county offering individual or family health insurance to first responders; prohibited acts.**

(1) No city or county offering an individual or family health insurance policy to first responders shall cancel such individual or family health insurance for any first responder who suffers serious bodily injury from an assault that occurs while the first responder is on duty and that results in the first responder falling below the minimum number of working hours needed to maintain his or her regular individual or family health insurance.

(2) The city or county shall only be obligated to provide such health insurance while the first responder is employed with the city or county.

(3) A city or county may cancel such health insurance if the first responder does not return to employment within twelve months after the date of injury.

(4) For purposes of this section, first responder means a sheriff, deputy sheriff, police officer, paid firefighter, or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

**Source:** Laws 2017, LB444, § 1.

#### **44-361 Rebates; prohibited; activities not considered a rebate.**

No insurance company, by itself or any other party, and no insurance agent or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or of any policy, or agent's commission thereon, or earnings, profits, dividends, or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any paid employment or contract for service, or for advice of any kind, or any other valuable consideration or inducement to, or for insurance, on any risk authorized to be taken under section 44-201 now or hereafter to be written, which is not specified in the policy contract of insurance; nor shall any such company, agent, or broker, personally or otherwise, offer, promise, give, sell or purchase any stock, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other things of value whatsoever, as inducement to insurance or in connection therewith, which is not specified in the policy. No insured person or party shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or broker's commission thereon, payable on the policy, or on any policy of insurance, or any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the policy contract of insurance. Extending of interest-free credit on life and liability insurance premiums or interest-free credit on crop hail insurance premiums shall not be a rebate of the premium. Payments made pursuant to the Nebraska Right to Shop Act shall not be considered a rebate of the premium for purposes of this section.

**Source:** Laws 1913, c. 154, § 140, p. 466; R.S.1913, § 3277; Laws 1919, c. 190, tit. V, art. XI, § 5, p. 648; C.S.1922, § 7884; C.S.1929, § 44-1105; R.S.1943, § 44-361; Laws 1961, c. 220, § 1, p. 653; Laws 1971, LB 137, § 1; Laws 1972, LB 1354, § 2; Laws 2018, LB1119, § 25.

Effective date July 19, 2018.

#### **Cross References**

**Nebraska Right to Shop Act**, see section 44-1401.

**44-361.01 Rebates; circumventing; presumptions.**

(1) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed ten percent of the total commissions or underwriting fees received during any one license year shall be presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be thirty percent for commissions and underwriting fees on crop insurance business.

(2) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed thirty percent of the total commissions and underwriting fees received during any one license year shall be conclusively presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be fifty percent for commissions and underwriting fees on crop insurance business.

**Source:** Laws 1955, c. 175, § 3, p. 503; Laws 2013, LB59, § 1.

**44-371 Annuity contract; insurance proceeds and benefits; exempt from claims of creditors; exceptions.**

(1)(a) Except as provided in subdivision (1)(b) of this section and in section 68-919, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (1)(a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) An insurance company shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

(2) Notwithstanding subsection (1) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No insurance company shall be liable or responsible to any person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

**Source:** Laws 1933, c. 73, § 1, p. 315; C.S.Supp.,1941, § 44-1130; R.S. 1943, § 44-371; Laws 1980, LB 940, § 4; Laws 1981, LB 327, § 1; Laws 1987, LB 335, § 1; Laws 1997, LB 47, § 1; Laws 2005, LB 465, § 3; Laws 2017, LB268, § 8.

#### **44-3,143 Life insurance policy proceeds; payment of interest; when.**

(1) Any insurance company authorized to do business in this state shall pay interest on any proceeds due on a life insurance policy if:

- (a) The insured was a resident of this state on the date of death;
- (b) The date of death was on or after June 6, 1991;
- (c) The beneficiary elects in writing to receive the proceeds in a lump-sum payment; and
- (d) The proceeds are not paid to the beneficiary within thirty days of receipt of proof of death of the insured by the insurance company.

(2) Interest shall accrue from the date of receipt of proof of death to the date of payment at the rate calculated pursuant to section 45-103 in effect on January 1 of the calendar year in which occurs the date of receipt of proof of death. For purposes of this section, date of payment shall include the date of the postmark stamped on an envelope, properly addressed and postage prepaid, containing the payment.

(3) If an action is commenced to recover the proceeds, this section shall not require the payment of interest for any period of time for which interest is awarded pursuant to sections 45-103 to 45-103.04.

(4) A violation of this section shall be an unfair claims settlement practice subject to the Unfair Insurance Claims Settlement Practices Act.

**Source:** Laws 1991, LB 419, § 40; Laws 2011, LB72, § 1.

#### **Cross References**

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

#### **44-3,144 Health care coverage of children; terms, defined.**

For purposes of sections 44-3,144 to 44-3,150:

- (1) Authorized attorney has the same meaning as in section 43-512;

(2) Child means an individual to whom or on whose behalf a legal duty of support is owed by an obligor;

(3) Department means the Department of Health and Human Services;

(4) Employer means an individual, a firm, a partnership, a corporation, an association, a union, a political subdivision, a state agency, or any agent thereof who pays income to an obligor on a periodic basis and has or provides health care coverage to the obligor-employee;

(5) Health care coverage means a health benefit plan or combination of plans, including fee for service, health maintenance organization, preferred provider organization, and other types of coverage available to either party, under which medical services could be provided to dependent children, that provide medical care or benefits;

(6) Insurer means an insurer as defined in section 44-103 offering a group health plan as defined in 29 U.S.C. 1167, as such section existed on January 1, 2002;

(7) Medical support means the provision of health care coverage, contribution to the cost of health care coverage, contribution to expenses associated with the birth of a child, other uninsured medical expenses of a child, or any combination thereof;

(8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) National medical support notice means a uniform administrative notice issued by the county attorney, authorized attorney, or department to enforce the medical support provisions of a support order;

(10) Obligee has the same meaning as in section 43-3341;

(11) Obligor has the same meaning as in section 43-3341;

(12) Plan administrator means the person or entity that administers health care coverage for an employer;

(13) Qualified medical child support order means an order that meets the requirements of 29 U.S.C. 1169, as such section existed on January 1, 2002; and

(14) Uninsured medical expenses means the reasonable and necessary health-related expenses that are not paid by health care coverage.

**Source:** Laws 1994, LB 1224, § 72; Laws 1996, LB 1044, § 234; Laws 1997, LB 307, § 103; Laws 2002, LB 1062, § 6; Laws 2006, LB 1248, § 56; Laws 2009, LB288, § 14; Laws 2018, LB702, § 4. Effective date July 19, 2018.

#### Cross References

Medical Assistance Act, see section 68-901.

### **44-3,159 Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.**

(1) No health plan and no self-funded employee benefit plan to the extent not preempted by federal law shall assert any contractual rights to the proceeds of any resources purchased by or on behalf of the policyholder, subscriber, certificate holder, or enrollee, including medical payments coverage under a motor vehicle insurance policy, uninsured or underinsured motorist coverage,

accident or disability income coverage, specific disease or illness coverage, or hospital indemnity or other fixed indemnity coverage.

(2) This section shall not (a) affect the coordination of benefits between health plans or self-funded employee benefit plans, (b) prevent the coordination of benefits between a health plan or self-funded employee benefit plan and medical payments coverage under a motor vehicle insurance policy if such coordination of benefits applies medical payments coverage to deductible, copayment, and coinsurance amounts after discounts provided through the health plan or self-funded employee benefit plan, or (c) prevent the application of the medical payments coverage under a motor vehicle insurance policy to items not covered by a health plan or self-funded employee benefit plan.

(3) For purposes of this section, health plan means an individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state except for (a) policies that provide coverage for specified disease or other limited-benefit coverage or hospital indemnity or other fixed indemnity coverage or (b) self-funded employee benefit plans to the extent preempted by federal law.

**Source:** Laws 2013, LB479, § 1.

#### ARTICLE 4

#### INSURANCE RESERVES; POLICY PROVISIONS

##### Section

- 44-402. Repealed. Laws 2014, LB 755, § 19.
- 44-402.01. Life insurance; reserves; separate accounts; establish; procedure.
- 44-403. Life insurance; standard of valuation; policies issued prior to operative date of law.
- 44-404. Transferred to section 44-8907.
- 44-407.23. Company; when subject to law.
- 44-407.24. Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.
- 44-407.26. Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.
- 44-408. Life insurance companies; ascertainment of condition; assets and liabilities; what considered.
- 44-416.06. Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.
- 44-416.07. Asset or reduction from liability for reinsurance; limitations; security required.
- 44-416.09. Rules and regulations.

**44-402 Repealed. Laws 2014, LB 755, § 19.**

**44-402.01 Life insurance; reserves; separate accounts; establish; procedure.**

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and upon approval of the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

**Source:** Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6; Laws 2011, LB72, § 2.

**44-403 Life insurance; standard of valuation; policies issued prior to operative date of law.**

This section shall apply to only those policies and contracts issued prior to the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance). All such valuations made by the Department of Insurance, or by its authority, shall be according to the standard of valuation adopted by the company, which standard shall be stated in its annual report to the department. Such standard of valuation, whether on the net level premium, preliminary term, any modified preliminary term, or select and ultimate reserve basis, for all such policies issued after July 17, 1913, shall be according to the American Experience or Actuaries' Table of Mortality, with not less than three and not more than four percent compound interest. When the preliminary term basis is used it shall not exceed one year. Insurance against total and permanent mental or physical disability resulting from accident or disease, or against accidental death, combined with a policy of life insurance, shall be valued on the basis of the mean reserve, being one-half of the additional annual premium charged therefor. Except as otherwise provided in subsection (3) of section 44-8907 for all annuities and pure endowments purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities shall be McClintock's Table of Mortality Among Annuitants, or the American Experience Table of Mortality, with compound interest at three and one-half percent per annum for individual annuities and five percent per annum for group annuities, but annuities deferred ten or more years, and written in connection with life or term insurance, shall be valued on the same mortality table from which the consideration or premiums were computed, with compound interest not higher than three and one-half percent per annum. The legal standard for the valuation of industrial policies shall be the American Experience Table of Mortality, with compound interest at not less than three nor more than three and one-half percent per annum, except that any life insurance company may voluntarily value its industrial policies written on the weekly payment plan according to the Standard Industrial Mortality Table or the Substandard Industrial Mortality Table. Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this section.

**Source:** Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(2), p. 355; R.S.1943, § 44-403; Laws 1973, LB 309, § 1; Laws 1979, LB 354, § 1; Laws 2014, LB755, § 13.

**44-404 Transferred to section 44-8907.****44-407.23 Company; when subject to law.**

(1) After August 24, 1979, any company may file with the Department of Insurance a written notice of its election to comply with the provisions of sections 44-403, 44-407.08 to 44-407.23, and 44-8907 after a specified date before the second anniversary of August 24, 1979. After the filing of such notice, such specified date shall be the operative date of this act for such company. Annuity contracts thereafter issued by such company shall comply



with such sections. If a company makes no such election, the operative date of this act for such company shall be the second anniversary of August 24, 1979.

(2) After July 16, 2004, a company may elect to apply sections 44-407.08 to 44-407.23 to annuity contracts on a contract-form-by-contract-form basis before the second anniversary of July 16, 2004. In all other instances, sections 44-407.08 to 44-407.23 shall become operative with respect to annuity contracts issued by the company after the second anniversary of July 16, 2004.

(3) The director may adopt and promulgate rules and regulations to carry out sections 44-407.10 to 44-407.23.

**Source:** Laws 1979, LB 354, § 19; Laws 2004, LB 1047, § 7; Laws 2014, LB755, § 14.

**44-407.24 Policies issued on or after operative date of law; adjusted premiums; present values; how calculated; filing of election.**

(1) This section shall apply to all policies issued on or after the operative date of this section as defined herein. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (a) the then present value of the future guaranteed benefits provided for by the policy; (b) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (c) one hundred twenty-five percent of the nonforfeiture net level premium as defined in this section. In applying the percentage specified in (c) above no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one percent per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premium, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (a) one percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (b) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b), where (a) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided for by the policy; and (b) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) All adjusted premiums and present values referred to in sections 44-407 to 44-409 shall for all policies of ordinary insurance be calculated on the basis of (a) the Commissioners 1980 Standard Ordinary Mortality Table or (b) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year.

At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year. Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available whether or not required by section 44-407.01, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any. A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of such tables. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any Commissioners Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the Commissioners Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the Department of Insurance approves by rule and regulation any commissioners standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual. For policies issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, any commissioners standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the valuation manual shall provide the commissioners standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the Department of Insurance

approves by rule and regulation any commissioners standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9) For policies issued before the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section 44-8907, rounded to the nearer one-quarter of one percent, except that the nonforfeiture interest rate shall not be less than four percent. For policies issued on and after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(10) Notwithstanding any other provision in sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907 to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) After the effective date of this section any company may file with the Department of Insurance a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989, except that the Director of Insurance may advance the operative date of this section for such a company after investigating and finding that (a) it is in the best interests of the policyholders of such company to do so, and (b) a majority of states in which such company is doing business have adopted legislation similar to sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907.

**Source:** Laws 1981, LB 355, § 11; Laws 2014, LB755, § 15.

#### Cross References

Mortality tables, see Appendix, Reissue, Vol. 2A, 2016.

#### **44-407.26 Policies issued on or after January 1, 1985; cash surrender value; nonforfeiture benefits; determination.**

This section, in addition to all other applicable provisions of sections 44-407 to 44-407.06, 44-407.08, 44-407.09, 44-407.24 to 44-407.26, and 44-8907, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of (a) the greater of zero and the basic cash value specified in this section and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary; *Provided, however*, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in section 44-407.02 or 44-407.04, whichever is applicable, shall be the same as are the effects specified in section 44-407.02 or 44-407.04, whichever is applicable, on the cash surrender values defined in that section.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in section 44-407.04 or 44-407.24, whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, and (b) must be such that no percentage after the later of the two policy anniversaries specified in the preceding item (a) may apply to fewer than five consecutive policy years. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in section 44-407.04 or 44-407.24, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Standard Nonforfeiture Law for Life Insurance. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in sections 44-407.01 to 44-407.03, 44-407.05, and 44-407.24. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in section 44-407.05 shall conform with the principles of this section.

**Source:** Laws 1981, LB 355, § 13; Laws 2014, LB755, § 16.

**44-408 Life insurance companies; ascertainment of condition; assets and liabilities; what considered.**

In ascertaining the condition of any life insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state or of the state or country in which it is organized at the

date of examination. There shall be charged against it as liabilities in addition to the capital stock, all outstanding indebtedness of the company, and the premium reserve on policies and additions thereto in force, computed according to the tables of mortality and rate of interest prescribed in sections 44-402.01 to 44-407.09.

**Source:** Laws 1913, c. 154, § 95, p. 439; R.S.1913, § 3232; Laws 1919, c. 190, tit. V, art. VI, § 3, p. 619; C.S.1922, § 7831; C.S.1929, § 44-503; R.S.1943, § 44-408; Laws 1965, c. 262, § 11, p. 742; Laws 2014, LB755, § 17.

**44-416.06 Credit for reinsurance; when allowed; suspension or revocation of accreditation or certification; director; powers; notice; hearing; insurer duties.**

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), (6), or (7) of this section and any additional requirements contained in rules and regulations adopted and promulgated by the Director of Insurance pursuant to subsection (2) of section 44-416.09 relating to or setting forth (a) the valuation of assets or reserve credits, (b) the amount and form of security supporting reinsurance arrangements, or (c) the circumstances pursuant to which credit will be reduced or eliminated. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (8) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Director of Insurance as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(a) File with the director evidence of its submission to this state's jurisdiction;

(b) Submit to this state's authority to examine its books and records;

(c) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(d) File annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Demonstrate to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than twenty million dollars and its accreditation has not been denied by the director within ninety days after submission of its application.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars except as provided in subdivision (5)(c)(ii) of this section;

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust; and

(iii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the director as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:



(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subdivision (6)(d) of this section;

(ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the director pursuant to rules and regulations;

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director pursuant to rules and regulations;

(iv) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the director as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(v) The assuming insurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis; and

(vi) The assuming insurer must satisfy any other requirements for certification deemed relevant by the director.

(c) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (6)(b) of this section:

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(d)(i) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the director as a certified reinsurer.

(ii) In order to determine whether the domiciliary jurisdiction of a non-United-States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United-States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recog-

nized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the director.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification in accordance with criteria to be developed under rules and regulations.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The director shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the director pursuant to rules and regulations. The director shall publish a list of all certified reinsurers and their ratings.

(f)(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules and regulations adopted and promulgated by the director.

(ii) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the director and consistent with the provisions of section 44-416.07 or in a multibeneficiary trust in accordance with subsection (5) of this section, except as otherwise provided in this subsection.

(iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (5) of this section and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (5) of this section. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iv) The minimum trusted surplus requirements provided in subsection (5) of this section are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trusted surplus of ten million dollars.

(v) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the director shall reduce the allowable

credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)(A) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(B) As used in subdivision (6)(f)(vi)(A) of this section, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(C) If the director continues to assign a higher rating as permitted by other provisions of this section, the requirement in subdivision (6)(f)(vi)(A) of this section does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners-accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(h) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), (5), or (6) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(9) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) or (6) of this section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(10)(a) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification.

(b) The director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the director's order on hearing unless:

(i) The reinsurer waives its right to hearing;

(ii) The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (6)(g) of this section; or

(iii) The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 44-416.07. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (6)(f) of this section or section 44-416.07.

(11)(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the director within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assum-

ing insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

**Source:** Laws 2005, LB 119, § 31; Laws 2015, LB298, § 1; Laws 2018, LB815, § 1.  
Effective date July 19, 2018.

**44-416.07 Asset or reduction from liability for reinsurance; limitations; security required.**

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 44-416.06 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer subject to any additional requirements contained in rules and regulations adopted and promulgated by the Director of Insurance pursuant to subsection (2) of section 44-416.09 relating to or setting forth the valuation of assets or reserve credits, the amount and form of security supporting reinsurance arrangements, or the circumstances pursuant to which credit will be reduced or eliminated. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

**Source:** Laws 2005, LB 119, § 32; Laws 2015, LB298, § 2; Laws 2018, LB815, § 2.  
Effective date July 19, 2018.

#### **44-416.09 Rules and regulations.**

(1) The director may adopt and promulgate rules and regulations to carry out sections 44-416.05 to 44-416.10.

(2)(a) The director may also adopt and promulgate rules and regulations applicable only to reinsurance arrangements described in subdivision (b) of this subsection.

(b) Any rule or regulation adopted and promulgated pursuant to this subsection shall only apply to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as determined by the director.

(c) Any rule or regulation adopted and promulgated pursuant to subdivision (b)(i) or (b)(ii) of this subsection may apply to any treaty containing (i) policies issued prior to January 1, 2015, if risk pertaining to such policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015, or (ii) policies issued on or after January 1, 2015.

(d) Any rule or regulation adopted and promulgated pursuant to this subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held, to use the valuation manual prescribed by the director pursuant to section 44-8908.

(e) Any rule or regulation adopted and promulgated pursuant to this subsection shall not apply to a cession to an assuming insurer that:

(i) Is a certified reinsurer in this state pursuant to subdivision (6)(a) of section 44-416.06; or

(ii) Maintains at least two hundred fifty million dollars in capital and surplus when determined in accordance with accounting practices and procedures manuals as prescribed by the director in substantial conformity with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners and is determined by the director to be:

(A) Licensed to transact insurance or reinsurance in at least twenty-six states; or

(B) Licensed to transact insurance or reinsurance in at least ten states and either licensed to transact insurance or is an accredited reinsurer in a total of at least thirty-five states.

(f) The authority to adopt and promulgate rules and regulations pursuant to this subsection does not limit the director's general authority to adopt rules and regulations pursuant to subsection (1) of this section.

**Source:** Laws 2005, LB 119, § 34; Laws 2018, LB815, § 3.

Effective date July 19, 2018.

## ARTICLE 5

### STANDARD PROVISIONS AND FORMS

#### Section

44-516. Automobile liability policy; notice of cancellation; reason for cancellation.

44-522. Policies; cancellation requirements.

44-523. Automobile liability insurance policy; cancellation; notice; exceptions.

#### **44-516 Automobile liability policy; notice of cancellation; reason for cancellation.**

(1) No notice of cancellation of a policy to which section 44-515 applies shall be effective unless mailed by registered mail, certified mail, or first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service to the named insured at least thirty days prior to the effective date of cancellation, except that if cancellation is for nonpayment of premium, at least ten days' notice of cancellation accompanied by the reason therefor shall be given. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium.

(2) Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. The insurer shall, upon such written request of the named insured, mailed or delivered to the insurer not less than twenty-five days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(3) For purposes of sections 44-514 to 44-521:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(4) Subsections (1) and (2) of this section shall not apply to nonrenewal.

**Source:** Laws 1972, LB 1396, § 3; Laws 1973, LB 390, § 2; Laws 1999, LB 326, § 2; Laws 2001, LB 360, § 2; Laws 2017, LB406, § 1.

#### **44-522 Policies; cancellation requirements.**

(1) No insurer may file an insurance policy with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause

unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

- (a) Nonpayment of premium;
- (b) The policy was obtained through a material misrepresentation;
- (c) Any insured has submitted a fraudulent claim;
- (d) Any insured has violated any of the terms and conditions of the policy;
- (e) The risk originally accepted has substantially increased;
- (f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

(4) Notice of cancellation or nonrenewal shall be sent by registered mail, certified mail, first-class mail, or first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(6) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile insurance coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.



(7) All policy forms issued for delivery in Nebraska shall conform to this section.

**Source:** Laws 1913, c. 154, § 72, p. 424; R.S.1913, § 3208; Laws 1919, c. 190, tit. V, art. IV, § 42, p. 604; C.S.1922, § 7807; C.S.1929, § 44-342; R.S.1943, § 44-379; Laws 1955, c. 176, § 1, p. 505; Laws 1986, LB 1184, § 1; R.S.1943, (1988), § 44-379; Laws 1989, LB 92, § 126; Laws 1991, LB 233, § 45; Laws 1999, LB 326, § 3; Laws 2000, LB 1119, § 37; Laws 2001, LB 360, § 5; Laws 2007, LB117, § 7; Laws 2017, LB406, § 2.

#### Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

### **44-523 Automobile liability insurance policy; cancellation; notice; exceptions.**

(1)(a) Except as provided in subdivision (1)(b) of this section, a notice of cancellation, given for reasons other than for nonpayment of premium, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered mail, certified mail, or first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service to the named insured at the address shown in the policy at least thirty days prior to the effective date of such cancellation.

(b) A notice of cancellation, initiated by a premium finance company, of a policy of automobile liability insurance issued or delivered in this state shall only be effective if mailed by registered mail, certified mail, or first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service to the named insured at the address shown in the policy at least ten days prior to the effective date of such cancellation.

(2) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation of a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(3) This section shall not apply (a) to any policy subject to sections 44-514 to 44-521, (b) to any policy issued under an automobile assigned risk plan or to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of the insured or on the ways adjoining such premises, and (c) to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(4) Any attempted cancellation in violation of the provisions of this section shall be void.

**Source:** Laws 1972, LB 481, § 1; Laws 1973, LB 390, § 1; R.S.1943, (1988), § 44-379.01; Laws 1989, LB 92, § 127; Laws 1999, LB 326, § 4; Laws 2001, LB 360, § 6; Laws 2017, LB406, § 3.

## ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS,  
AND ACCIDENT INSURANCE

## Section

- 44-710. Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.
- 44-710.01. Sickness and accident insurance; standard policy provisions; requirements; enumeration.
- 44-710.03. Sickness and accident insurance; standard policy form; mandatory provisions.
- 44-710.04. Sickness and accident insurance; permissive provisions; standard policy form; requirements.
- 44-713. Insured in temporary custody; health insurance policy; insurer; duties; powers; incarceration; notice; refusal to credential health care provider; notice; applicability of section.
- 44-772. Substance abuse treatment center, defined.
- 44-792. Mental health conditions; terms, defined.
- 44-7,104. Coverage for orally administered anticancer medication; requirements; applicability.
- 44-7,105. Fees charged for dental services; prohibited acts.
- 44-7,106. Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.
- 44-7,107. Telehealth; coverage.

**44-710 Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.**

(1) Except as otherwise provided by the Director of Insurance and subsection (2) of this section, no policy of sickness and accident insurance shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) No sickness and accident insurance policy subject to the federal Patient Protection and Affordable Care Act, Public Law 111-148, shall be delivered or issued for delivery in this state, including any policy or certificate of sickness and accident insurance issued to or for associations not domiciled in this state other than a certificate issued to an employee under an employee benefit plan of an employer headquartered in another state where the policy is lawfully

issued in that state, nor shall any endorsement, rider, certificate, or application which becomes a part of any such policy be used until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with and approved by the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1947, c. 164, § 2(1), p. 452; Laws 1951, c. 143, § 1, p. 581; Laws 1959, c. 209, § 1, p. 728; Laws 1969, c. 359, § 21, p. 1276; Laws 1989, LB 6, § 5; Laws 1989, LB 92, § 130; Laws 2013, LB336, § 1.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **44-710.01 Sickness and accident insurance; standard policy provisions; requirements; enumeration.**

No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of an intellectual disability or a physical disability and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an

additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

**Source:** Laws 1957, c. 188, § 2, p. 643; Laws 1969, c. 374, § 1, p. 1333; Laws 1989, LB 92, § 131; Laws 1998, LB 1063, § 1; Laws 2009, LB551, § 1; Laws 2013, LB23, § 11.

**44-710.03 Sickness and accident insurance; standard policy form; mandatory provisions.**

Except as provided in section 44-710.05, each policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain the provisions specified in this section in the words in which the provisions appear in this section, except that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Director of Insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: ENTIRE CONTRACT: CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows: TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such two-year period. The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim

during such initial two-year period nor to limit the application of subdivisions (1) through (5) of section 44-710.04 in the event of misstatement with respect to age or occupation or other insurance. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause "as defined in the policy" may be omitted at the insurer's option, under the caption **INCONTESTABLE**: After this policy has been in force for a period of two years during the lifetime of the insured, excluding any period during which the insured is disabled, it shall become incontestable as to the statements contained in the application. (b) No claim for loss incurred or disability, as defined in the policy, commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows: **GRACE PERIOD**: A grace period of ..... (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies, and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force. A policy which contains a cancellation provision may add, at the end of the above provision: Subject to the right of the insurer to cancel in accordance with the cancellation provision hereof. A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his or her last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

(4) A provision as follows: **REINSTATEMENT**: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy, except that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid but not to any period more than sixty days prior to the date of reinstatement. (The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the

case of a policy issued after age forty-four, for at least five years from its date of issue.)

(5) A provision as follows: **NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he or she shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of such disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.

(6) A provision as follows: **CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.

(7) A provision as follows: **PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its office in case of claim for loss for which the policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time and if such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows: **TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows: **PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at

the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: (a) If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. . . . . (insert an amount which shall not exceed five thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment. (b) Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

(10) A provision as follows: **PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows: **LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows: **CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy, to any change of beneficiary or beneficiaries, or to any other changes in this policy. The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: **CONFORMITY WITH STATE AND FEDERAL LAW:** Any provision of this policy which, on its effective date, is in conflict with the law of the federal government or the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such law.

**Source:** Laws 1957, c. 188, § 4, p. 644; Laws 1989, LB 92, § 133; Laws 2011, LB72, § 3.

**44-710.04 Sickness and accident insurance; permissive provisions; standard policy form; requirements.**

Except as provided in sections 44-710.05 and 44-787, no policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such

provisions are in the words in which the provisions appear in this section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: **CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change of occupation.

(2) A provision as follows: **MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) Except as provided in subdivision (6) of this section, a provision as follows: **OTHER INSURANCE IN THIS INSURER:** If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of \$. ..... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his or her estate; or in lieu thereof: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary, or his or her estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision-of-service basis or on an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense-incurred coverage of this policy shall be for such proportion of the loss as the amount which would



otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision-of-service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase . . . . **EXPENSE-INCURRED BENEFITS**. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(5) Except as provided in subdivision (6) of this section, a provision as follows: **INSURANCE WITH OTHER INSURERS**: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase . . . . **OTHER BENEFITS**. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for

such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(6) In lieu of the provisions set forth in subdivisions (3) through (5) of this section but subject to section 44-3,159, the insurer may at its option include a provision entitled COORDINATION OF BENEFITS which provides for nonduplication and coordination between two or more coverages based on rules and regulations adopted and promulgated by the director.

(7) A provision as follows: **RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of valid loss-of-time coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the Director of Insurance or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(8) A provision as follows: **UNPAID PREMIUM:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(9) A provision as follows: **CANCELLATION:** The insurer may cancel this policy at any time by written notice delivered to the insured which shall be effective only if mailed by certified or registered mail to the named insured at his or her last-known address, as shown by the records of the insurer, at least thirty days prior to the effective date of cancellation, except that cancellation

due to failure to pay the premium or in cases of fraud or misrepresentation shall not require that such notice be given at least thirty days prior to cancellation. Subject to any provisions in the policy or a grace period, cancellation for failure to pay a premium shall be effective as of midnight of the last day for which the premium has been paid. In cases of fraud or misrepresentation, coverage shall be canceled upon the date of the notice or any later date designated by the insurer. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(10) A provision as follows: **ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows: **INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

**Source:** Laws 1957, c. 188, § 5, p. 650; Laws 1985, LB 76, § 1; Laws 1989, LB 92, § 134; Laws 1997, LB 55, § 2; Laws 2011, LB72, § 4; Laws 2013, LB479, § 2.

**44-713 Insured in temporary custody; health insurance policy; insurer; duties; powers; incarceration; notice; refusal to credential health care provider; notice; applicability of section.**

(1) For purposes of this section:

(a) Notwithstanding section 44-3,131, health insurance policy means (i) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for a policy that provides coverage for a specified disease or other limited-benefit coverage, and (ii) any self-funded employee benefit plan to the extent not preempted by federal law;

(b) Jail means a city or county correctional or jail facility operated by a political subdivision of the state;

(c) Pending disposition of charges means up until the time of sentencing and shall not include any time after sentencing as may occur due to appeals; and

(d) Temporary custody means in the custody of a jail pending disposition of charges.

(2) Except as provided in subsection (4) of this section, an insurer offering a health insurance policy may not (i) cancel the coverage of an insured while the insured is in temporary custody on the basis of such custody or (ii) deny coverage for any medical services or supplies covered by the policy and

received while the insured is in temporary custody if such services or supplies were provided to the insured by an employee or contractor of a jail who meets the credentialing criteria of the health insurance policy.

(3) Except as set forth under section 47-704, an insurer offering a health insurance policy shall pay claims for covered medical services or supplies provided by an out-of-network health care provider to an insured who is in temporary custody in an amount that is not less than one hundred percent of the medicare rate for such services or supplies. The political subdivision acting as an out-of-network provider shall notify the insurer of the cost incurred by the insured while in temporary custody.

(4) An insurer offering a health insurance policy may:

(a) Deny coverage for the treatment of injuries resulting from a violation of law by the insured;

(b) Exclude from any requirements for reporting quality outcomes or performance any covered medical services provided to an insured in temporary custody;

(c) Impose the same contractual provisions, including requirements for billing and medical coding, under the policy for medical services provided to insureds who are in temporary custody as imposed for medical services provided to insureds who are not in such custody;

(d) Deny coverage of diagnostic tests or health evaluations required as a matter of course for all individuals who are in temporary custody;

(e) Limit coverage of hospital and ambulatory surgical center services provided to an insured in temporary custody to medical services provided by in-network hospitals and ambulatory surgical centers;

(f) Deny coverage for costs of medical services made necessary by the negligence, recklessness, or intentional misconduct of the jail or its employees as set forth in section 47-705; and

(g) If an insured is incarcerated after the disposition of charges or is committed to the custody or supervision of the Department of Correctional Services, cancel coverage or deny coverage for any medical services or supplies covered by the plan and provided during such incarceration or while in the custody or supervision of the department.

(5) If an insured is incarcerated after the disposition of charges or is committed to the custody or supervision of the Department of Correctional Services, a jail which has sought reimbursement for medical services under this section shall notify the insurer that the insured has been subsequently incarcerated or placed in such custody.

(6)(a) An insurer may not refuse to credential a health care provider who is an employee or a contractor of a political subdivision on the basis that the employee or contractor provides medical services in a jail.

(b) If an insurer refuses to credential a health care provider who is an employee or a contractor of a political subdivision who provides medical services in a jail, the insurer must give written notice to the provider explaining the reasons for the refusal.

(7) This section shall not:

(a) Apply to coverage for an insured in custody following the disposition of charges;

(b) Impair any right of an employer to remove an employee from coverage under a health insurance plan;

(c) Release an insurer from the requirement to coordinate benefits for persons who are insured by more than one insurer; or

(d) Limit an insurer's right to rescind coverage in accordance with law.

(8) A political subdivision shall not pay health insurance policy premiums on behalf of a person who is in temporary custody.

(9) This section applies to health insurance policies issued or renewed on or after January 1, 2019, and to claims for reimbursement based on such policies for costs incurred on or after January 1, 2019.

**Source:** Laws 2018, LB480, § 1.

Effective date July 19, 2018.

#### **44-772 Substance abuse treatment center, defined.**

Substance abuse treatment center shall mean an institution licensed as a substance abuse treatment center by the Department of Health and Human Services, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

**Source:** Laws 1980, LB 646, § 4; Laws 1985, LB 209, § 1; Laws 1985, LB 253, § 1; Laws 1996, LB 1044, § 237; Laws 1996, LB 1155, § 17; Laws 2000, LB 819, § 70; Laws 2007, LB296, § 174; Laws 2018, LB1034, § 47.

Effective date July 19, 2018.

#### **44-792 Mental health conditions; terms, defined.**

For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, or (c) a practicing mental health

professional licensed or certified in this state as provided in the Mental Health Practice Act;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

**Source:** Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135; Laws 2018, LB1034, § 48.

Effective date July 19, 2018.

#### Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Mental Health Practice Act, see section 38-2101.

Psychology Interjurisdictional Compact, see section 38-3901.

### **44-7,104 Coverage for orally administered anticancer medication; requirements; applicability.**

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected anticancer medications that are covered as medical benefits by the policy, certificate, contract, or plan.

(2) This section does not prohibit such policy, certificate, contract, or plan from requiring prior authorization for a prescribed, orally administered anticancer medication. If such medication is authorized, the cost to the covered individual shall not exceed the coinsurance or copayment that would be applied to any other cancer treatment involving intravenously administered or injected anticancer medications.

(3) A policy, certificate, contract, or plan provider shall not reclassify any anticancer medication or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on any anticancer medication to achieve compliance with this section. Any change that otherwise increases an out-of-pocket expense applied to any anticancer medication shall also be applied to the majority of comparable medical or pharmaceutical benefits under the policy, certificate, contract, or plan.

(4) This section does not prohibit a policy, certificate, contract, or plan provider from increasing cost-sharing for all benefits, including cancer treatments.

(5) This section shall apply to any policy, certificate, contract, or plan that is delivered, issued for delivery, or renewed in this state on or after October 1, 2012.

**Source:** Laws 2012, LB882, § 1; Laws 2014, LB254, § 1.

#### **44-7,105 Fees charged for dental services; prohibited acts.**

Notwithstanding section 44-3,131, (1) an individual or group sickness or accident policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and a hospital, medical, or surgical expense-incurred policy, (2) a self-funded employee benefit plan to the extent not preempted by federal law, and (3) a certificate, agreement, or contract to provide limited health services issued by a prepaid limited health service organization as defined in section 44-4702 shall not include a provision, stipulation, or agreement establishing or limiting any fees charged for dental services that are not covered by the policy, certificate, contract, agreement, or plan.

**Source:** Laws 2012, LB810, § 1.

#### **44-7,106 Coverage for screening, diagnosis, and treatment of autism spectrum disorder; requirements.**

(1) For purposes of this section:

(a) Applied behavior analysis means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(b) Autism spectrum disorder means any of the pervasive developmental disorders or autism spectrum disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders, as the most recent edition of such manual existed on July 18, 2014;

(c) Behavioral health treatment means counseling and treatment programs, including applied behavior analysis, that are: (i) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and (ii) provided or supervised, either in person or by telehealth, by a behavior analyst certified by a national certifying organization or a licensed psychologist if the services performed are within the boundaries of the psychologist's competency;

(d) Diagnosis means a medically necessary assessment, evaluation, or test to diagnose if an individual has an autism spectrum disorder;

(e) Pharmacy care means a medication that is prescribed by a licensed physician and any health-related service deemed medically necessary to determine the need or effectiveness of the medication;

(f) Psychiatric care means a direct or consultative service provided by a psychiatrist licensed in the state in which he or she practices;

(g) Psychological care means a direct or consultative service provided by a psychologist licensed in the state in which he or she practices;

(h) Therapeutic care means a service provided by a licensed speech-language pathologist, occupational therapist, or physical therapist; and

(i) Treatment means evidence-based care, including related equipment, that is prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist, including:

- (i) Behavioral health treatment;
- (ii) Pharmacy care;
- (iii) Psychiatric care;
- (iv) Psychological care; and
- (v) Therapeutic care.

(2) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law, including any such plan provided for employees of the State of Nebraska, shall provide coverage for the screening, diagnosis, and treatment of an autism spectrum disorder in an individual under twenty-one years of age. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by such policy or contract, coverage under this section shall be included in such policies or contracts that are delivered, issued for delivery, amended, or renewed in this state or outside this state if the policy or contract insures a resident of Nebraska on or after January 1, 2015. No insurer shall terminate coverage or refuse to deliver, issue for delivery, amend, or renew coverage of the insured as a result of an autism spectrum disorder diagnosis or treatment. Nothing in this subsection applies to non-grandfathered plans in the individual and small group markets that are required to include essential health benefits under the federal Patient Protection and Affordable Care Act or to medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(3) Except as provided in subsection (4) of this section, coverage for an autism spectrum disorder shall not be subject to any limits on the number of visits an individual may make for treatment of an autism spectrum disorder, nor shall such coverage be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to an insured than the equivalent provisions that apply to a general physical illness under the policy.

(4) Coverage for behavioral health treatment, including applied behavior analysis, shall be subject to a maximum benefit of twenty-five hours per week until the insured reaches twenty-one years of age. Payments made by an insurer on behalf of a covered individual for treatment other than behavioral health treatment, including applied behavior analysis, shall not be applied to any maximum benefit established under this section.

(5) Except in the case of inpatient service, if an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every six months unless the insurer and the individual's licensed physician or licensed psychologist execute an agreement that a more frequent review is necessary. Any such agreement regarding the right to review a treatment plan more frequently shall



apply only to a particular individual being treated for an autism spectrum disorder and shall not apply to all individuals being treated for autism spectrum disorder by a licensed physician or licensed psychologist. The cost of obtaining a review under this subsection shall be borne by the insurer.

(6) This section shall not be construed as limiting any benefit that is otherwise available to an individual under a hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan.

**Source:** Laws 2014, LB254, § 2.

**44-7,107 Telehealth; coverage.**

Any insurer offering (1) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (2) any hospital, medical, or surgical expense-incurred policy, or (3) any self-funded employee benefit plan to the extent not preempted by federal law, shall not exclude, in any policy, certificate, contract, or plan offered or renewed on or after August 24, 2017, a service from coverage solely because the service is delivered through telehealth as defined in section 44-312 and is not provided through in-person consultation or contact between a licensed health care provider and a patient. This section does not apply to any policy, certificate, contract, or plan that provides coverage for a specified disease or other limited-benefit coverage.

**Source:** Laws 2017, LB92, § 1.

**ARTICLE 9**

**PRIVACY OF INSURANCE CONSUMER INFORMATION ACT**

Section

44-905. Annual privacy notice to consumers; when required.

**44-905 Annual privacy notice to consumers; when required.**

(1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. For purposes of this subsection, annually means at least once in any period of twelve consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2) A licensee is not required to provide an annual notice under subsection (1) of this section if the licensee:

(a) Provides nonpublic personal information to nonaffiliated third parties only in accordance with sections 44-913 to 44-915; and

(b) Has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with section 44-904 or subsection (1) of this section.

(3)(a) A licensee is not required to provide an annual notice to a former customer.

(b) For purposes of this subsection, a former customer is an individual with whom a licensee no longer has a continuing relationship. A former customer includes:

(i) An individual who is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(ii) An individual whose policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials;

(iii) An individual whose last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful; and

(iv) In the case of providing real estate settlement services, the customer has completed execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(4) When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 44-909.

**Source:** Laws 2001, LB 52, § 5; Laws 2017, LB241, § 1.

## ARTICLE 10

### FRATERNAL INSURANCE

#### Section

44-1090. Benefit contract; contents.

44-1095. Funds and property; exempt from taxation.

#### **44-1090 Benefit contract; contents.**

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the contract. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this subsection shall be void.

(2) Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate shall bind the owner and the beneficiaries and shall govern and control the benefit contract in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or

diminish benefits which the society contracted to give the owner as of the date of issuance of the contract.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board and that if the payment is not made either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or (b) in lieu of or in combination with subdivision (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) A domestic society may assess owners as described in subsection (4) of this section only after such assessment is filed with the Director of Insurance and approved by him or her. In the case of a foreign or alien society, notice of an assessment shall be provided to the director at least thirty days before the effective date of the assessment. The director shall have the authority to prohibit any foreign or alien society that has assessed its owners from issuing any new contracts of insurance in this state.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(7) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the Director of Insurance in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from September 6, 1985, shall meet the standard contract provision requirements not inconsistent with sections 44-1072 to 44-10,109 for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government,

and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

**Source:** Laws 1985, LB 508, § 19; Laws 2013, LB426, § 1.

#### **44-1095 Funds and property; exempt from taxation.**

Every society organized or licensed under sections 44-1072 to 44-10,109 shall be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every state, county, district, municipal, and school tax.

**Source:** Laws 1985, LB 508, § 24; Laws 2015, LB414, § 1.

### **ARTICLE 13**

#### **HEALTH CARRIER EXTERNAL REVIEW ACT**

##### Section

- 44-1301. Act, how cited.
- 44-1302. Purpose of act.
- 44-1303. Terms, defined.
- 44-1304. Applicability of act.
- 44-1305. Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.
- 44-1306. Request for external review.
- 44-1307. Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.
- 44-1308. Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.
- 44-1309. Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.
- 44-1310. Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.
- 44-1311. External review decision; how treated; limitation on subsequent request.
- 44-1312. Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.
- 44-1313. Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.
- 44-1314. Liability for damages.
- 44-1315. Records; report; contents.
- 44-1316. Health carrier; cost.
- 44-1317. Health carrier; disclosure; format; contents.
- 44-1318. Applicability of act.

#### **44-1301 Act, how cited.**

Sections 44-1301 to 44-1318 shall be known and may be cited as the Health Carrier External Review Act.

**Source:** Laws 2013, LB147, § 1.

**44-1302 Purpose of act.**

The purpose of the Health Carrier External Review Act is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination.

**Source:** Laws 2013, LB147, § 2.

**44-1303 Terms, defined.**

For purposes of the Health Carrier External Review Act:

(1) Adverse determination means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefor denied, reduced, or terminated;

(2) Ambulatory review means the utilization review of health care services performed or provided in an outpatient setting;

(3) Authorized representative means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent;

(4) Benefits or covered benefits means those health care services to which a covered person is entitled under the terms of a health benefit plan;

(5) Best evidence means evidence based on:

(a) Randomized clinical trials;

(b) If randomized clinical trials are not available, cohort studies or case-control studies;

(c) If the criteria described in subdivisions (5)(a) and (b) of this section are not available, case-series; or

(d) If the criteria described in subdivisions (5)(a), (b), and (c) of this section are not available, expert opinions;

(6) Case-control study means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received;

(7) Case management means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(8) Case-series means an evaluation of a series of patients with a particular outcome, without the use of a control group;

(9) Certification means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service has been reviewed and, based upon

the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(10) Clinical review criteria means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services;

(11) Cohort study means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention;

(12) Concurrent review means a utilization review conducted during a patient's hospital stay or course of treatment;

(13) Covered person means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(14) Director means the Director of Insurance;

(15) Discharge planning means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(16) Disclose means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information;

(17) Emergency medical condition means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention if failure to provide such medical attention would result in a serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy;

(18) Emergency services means health care items and services furnished or required to evaluate and treat an emergency medical condition;

(19) Evidence-based standard means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of an individual patient;

(20) Expert opinion means a belief or an interpretation by a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy;

(21) Facility means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(22) Final adverse determination means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth in the Health Carrier Grievance Procedure Act;

(23) Health benefit plan means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services;

(24) Health care professional means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law;

(25) Health care provider or provider means a health care professional or a facility;

(26) Health care services means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(27) Health carrier means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the director, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services;

(28) Health information means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual or a member of the individual's family;

(b) The provision of health care services to an individual; or

(c) Payment for the provision of health care services to an individual;

(29) Independent review organization means an entity that conducts independent external reviews of adverse determinations and final adverse determinations;

(30) Medical or scientific evidence means evidence found in the following sources:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's United States National Library of Medicine for indexing in Index Medicus, known as Medline, and Elsevier Science Ltd. for indexing in Excerpta Medica, known as Embase;

(c) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the federal Social Security Act;

(d) The following standard reference compendia:

(i) The AHFS Drug Information;

(ii) Drug Facts and Comparisons;

(iii) The American Dental Association Guide to Dental Therapeutics; and

(iv) The United States Pharmacopoeia Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(i) The federal Agency for Healthcare Research and Quality of the United States Department of Health and Human Services;

(ii) The National Institutes of Health;

(iii) The National Cancer Institute;

- (iv) The National Academy of Sciences;
  - (v) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;
  - (vi) The federal Food and Drug Administration; and
  - (vii) Any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or
  - (f) Any other medical or scientific evidence that is comparable to the sources listed in subdivisions (30)(a) through (e) of this section;
- (31) Prospective review means a utilization review conducted prior to an admission or a course of treatment;
- (32) Protected health information means health information:
- (a) That identifies an individual who is the subject of the information; or
  - (b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual;
- (33) Randomized clinical trial means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time;
- (34) Retrospective review means a review of medical necessity conducted after health care services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment;
- (35) Second opinion means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service;
- (36) Utilization review means a set of formal techniques designed to monitor the use or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review; and
- (37) Utilization review organization means an entity that conducts a utilization review, other than a health carrier performing a review for its own health benefit plans.

**Source:** Laws 2013, LB147, § 3.

**Cross References**

**Health Carrier Grievance Procedure Act**, see section 44-7301.

**44-1304 Applicability of act.**

- (1) Except as provided in subsection (2) of this section, the Health Carrier External Review Act shall apply to all health carriers.
- (2)(a) The act shall not apply to a policy or certificate that provides coverage for:
- (i) A specified disease, specified accident, or accident-only coverage;
  - (ii) Credit;



- (iii) Dental;
- (iv) Disability income;
- (v) Hospital indemnity;
- (vi) Long-term care insurance as defined in section 44-4509;
- (vii) Vision care; or
- (viii) Any other limited supplemental benefit.

(b) The act shall not apply to:

- (i) A medicare supplement policy of insurance as defined in section 44-3602;
- (ii) Coverage under a plan through medicare, medicaid, or the Federal Employees Health Benefits Program;
- (iii) Any coverage issued under Chapter 55 of Title 10 of the United States Code and any coverage issued as a supplement to that coverage;
- (iv) Any coverage issued as supplemental to liability insurance;
- (v) Workers' compensation or similar insurance;
- (vi) Automobile medical-payment insurance; or
- (vii) Any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

**Source:** Laws 2013, LB147, § 4.

**44-1305 Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.**

(1)(a) A health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 44-1308, 44-1309, or 44-1310 and include the appropriate statements and information as set forth in subsection (2) of this section at the same time that the health carrier sends written notice of:

- (i) An adverse determination upon completion of the health carrier's utilization review process set forth in the Utilization Review Act; and
- (ii) A final adverse determination.

(b) As part of the written notice required under subdivision (1)(a) of this section, a health carrier shall include the following, or substantially equivalent, language: We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the Director of Insurance (insert address and telephone number of the office of the director).

(c) The director may prescribe by rule and regulation the form and content of the notice required under this section.

(2)(a) The health carrier shall include in the notice required under subsection (1) of this section:

- (i) For a notice related to an adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of an expedited review of a grievance involving an adverse determination as set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to section 44-1309 or 44-1310 if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated, at the same time the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, but that the independent review organization assigned to conduct the expedited external review will determine whether the covered person shall be required to complete the expedited review of the grievance prior to conducting the expedited external review; and

(B) The covered person or the covered person's authorized representative may file a grievance under the health carrier's internal grievance process as set forth in section 44-7308, but if the health carrier has not issued a written decision to the covered person or his or her authorized representative within the time allowed for an internal grievance pursuant to section 44-7308 and the covered person or his or her authorized representative has not requested or agreed to a delay, the covered person or his or her authorized representative may file a request for external review pursuant to section 44-1306 and shall be considered to have exhausted the health carrier's internal grievance process for purposes of section 44-1307; and

(ii) For a notice related to a final adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review pursuant to section 44-1309; or

(B) If the final adverse determination concerns:

(I) An admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 44-1309; or

(II) A denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational, the covered person or the covered person's authorized representative may file a request for a standard external review to be conducted pursuant to section 44-1310 or if the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated, the

covered person or his or her authorized representative may request an expedited external review to be conducted under section 44-1310.

(b) In addition to the information to be provided pursuant to subdivision (2)(a) of this section, the health carrier shall include a copy of the description of both the standard and expedited external review procedures that the health carrier is required to provide pursuant to section 44-1317 and shall highlight the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and include any forms used to process an external review.

(c) As part of any forms provided under subdivision (2)(b) of this section, the health carrier shall include an authorization form or other document approved by the director that complies with the requirements of 45 C.F.R. 164.508, by which the covered person, for purposes of conducting an external review under the Health Carrier External Review Act, authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review.

**Source:** Laws 2013, LB147, § 5; Laws 2016, LB840, § 1.

#### Cross References

Utilization Review Act, see section 44-5416.

#### **44-1306 Request for external review.**

(1)(a) Except for a request for an expedited external review as set forth in section 44-1309, all requests for external review shall be made in writing to the director.

(b) The director may prescribe by rule and regulation the form and content of external review requests required to be submitted under this section.

(2) A covered person or the covered person's authorized representative may make a request for an external review of an adverse determination or final adverse determination.

**Source:** Laws 2013, LB147, § 6.

#### **44-1307 Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.**

(1)(a) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 44-1308, 44-1309, or 44-1310 shall not be made until the covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(b) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section if the covered person or the covered person's authorized representative:

(i) Has filed a grievance involving an adverse determination pursuant to section 44-7308; and

(ii) Except to the extent that the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within the time allowed for an internal grievance pursuant to section 44-7308.

(c) Notwithstanding subdivision (1)(b) of this section, a covered person or the covered person's authorized representative may not make a request for an external review of an adverse determination involving a retrospective review determination made pursuant to the Utilization Review Act until the covered person has exhausted the health carrier's internal grievance process.

(2)(a)(i) At the same time that a covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, the covered person or his or her authorized representative may file a request for an expedited external review of the adverse determination:

(A) Under section 44-1309 if the covered person has a medical condition in which the timeframe for completion of an expedited review of the grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(B) Under section 44-1310 if the adverse determination involves a denial of coverage based upon a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review under subdivision (2)(a)(i) of this section, the independent review organization conducting the external review in accordance with the provisions of section 44-1309 or 44-1310 shall determine whether the covered person shall be required to complete the expedited grievance review process set forth in section 44-7311 before it conducts the expedited external review.

(iii) Upon a determination made pursuant to subdivision (2)(a)(ii) of this section that the covered person must first complete the expedited grievance review process set forth in section 44-7311, the independent review organization shall immediately notify the covered person and, if applicable, the covered person's authorized representative of such determination and the fact that it will not proceed with the expedited external review set forth in section 44-1309 until completion of the expedited grievance review process and the covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(b) A request for an external review of an adverse determination may be made before the covered person has exhausted the health carrier's internal grievance procedures as set forth in section 44-7308 if the health carrier agrees to waive the exhaustion requirement.

(3) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subdivision (2)(b) of this section, the covered person or the covered person's authorized representative may file a request in writing for a standard external review as set forth in section 44-1308 or 44-1310.

**Source:** Laws 2013, LB147, § 7; Laws 2016, LB840, § 2.

#### Cross References

**Health Carrier Grievance Procedure Act**, see section 44-7301.  
**Utilization Review Act**, see section 44-5416.

**44-1308 Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.**

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305, a covered person or the covered person's authorized representative may file a request for an external review with the director.

(b) Within one business day after the date of receipt of a request for an external review pursuant to subdivision (1)(a) of this section, the director shall send a copy of the request to the health carrier.

(2) Within five business days following the date of receipt of the copy of the external review request from the director under subdivision (1)(b) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time that the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service was provided;

(b) The health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and covered person and, if applicable, the covered person's authorized representative, in writing whether:

(i) The request is complete; and

(ii) The request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(4)(a) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, the director shall, within one business day after the date of receipt of the notice:

(i) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(c) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or his or her authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to but may accept and consider additional information submitted after five business days.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its utilization review organization to provide the documents

and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Within one business day after making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director.

(6)(a) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section, the assigned independent review organization shall forward the information to the health carrier within one business day.

(7)(a) Upon receipt of the information, if any, required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

(d)(i) Within one business day after making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8) In addition to the documents and information provided pursuant to subsection (5) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

- (a) The covered person's medical records;
- (b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (8)(a) through (f) of this section to the extent that the information or documents are available and the clinical reviewer or reviewers consider it appropriate.

(9)(a) Within forty-five days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(b) The independent review organization shall include in the notice sent pursuant to subdivision (9)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The date that the independent review organization received the assignment from the director to conduct the external review;

(iii) The date that the external review was conducted;

(iv) The date of its decision;

(v) The principal reason or reasons for its decision, including what applicable, if any, evidence-based standards were a basis for its decision;

(vi) The rationale for its decision; and

(vii) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(c) Upon receipt of a notice of a decision pursuant to subdivision (9)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(10) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

**Source:** Laws 2013, LB147, § 8.



## Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.  
Utilization Review Act, see section 44-5416.

**44-1309 Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.**

(1) Except as provided in subsection (6) of this section, a covered person or the covered person's authorized representative may make a request for an expedited external review with the director at the time that the covered person receives:

(a) An adverse determination if:

(i) The adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(ii) The covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311; or

(b) A final adverse determination:

(i) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility.

(2)(a) Upon receipt of a request for an expedited external review, the director shall immediately send a copy of the request to the health carrier.

(b) Immediately upon receipt of the request pursuant to subdivision (2)(a) of this section, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (2) of section 44-1308. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that an external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of section 44-1308 notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (2)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered

person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Upon receipt of the notice that the request meets the reviewability requirements, the director shall immediately assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312. The director shall immediately notify the health carrier of the name of the assigned independent review organization.

(f) In reaching a decision in accordance with subsection (5) of this section, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Health Carrier Grievance Procedure Act or the Utilization Review Act.

(3) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subdivision (2)(e) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(4) In addition to the documents and information provided or transmitted pursuant to subsection (3) of this section, the assigned independent review organization, to the extent that the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's pertinent medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization in making adverse determinations; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (4)(a) through (f) of this section to the extent that the information and documents are available and the clinical reviewer or reviewers consider it appropriate.

(5)(a) As expeditiously as the covered person's medical condition or circumstances requires, but in no event more than seventy-two hours after the date of receipt of the request for an expedited external review that meets the reviewa-

bility requirements set forth in subsection (2) of section 44-1308, the assigned independent review organization shall:

(i) Make a decision to uphold or reverse the adverse determination or final adverse determination; and

(ii) Notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director of the decision.

(b) If the notice provided pursuant to subdivision (5)(a) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall:

(i) Provide written confirmation of the decision to the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director; and

(ii) Include the information set forth in subdivision (9)(b) of section 44-1308.

(c) Upon receipt of the notice of a decision pursuant to subdivision (5)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(6) An expedited external review may not be provided for retrospective adverse or final adverse determinations.

(7) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

**Source:** Laws 2013, LB147, § 9.

#### Cross References

**Health Carrier Grievance Procedure Act**, see section 44-7301.

**Utilization Review Act**, see section 44-5416.

**44-1310 Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.**

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305 that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the director.

(b)(i) A covered person or the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subdivision (1)(a) of this section if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review, the director shall immediately notify the health carrier.

(iii)(A) Upon notice of the request for expedited external review, the health carrier shall immediately determine whether the request meets the reviewability requirements of subdivision (2)(b) of this section. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(B) The director may specify the form for the health carrier's notice of initial determination under subdivision (1)(b)(iii)(A) of this section and any supporting information to be included in the notice.

(C) The notice of initial determination under subdivision (1)(b)(iii)(A) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(iv)(A) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(B) In making a determination under subdivision (1)(b)(iii)(A) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(v) Upon receipt of the notice that the expedited external review request meets the reviewability requirements of subdivision (2)(b) of this section, the director shall immediately assign an independent review organization to review the expedited request from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization.

(vi) At the time the health carrier receives the notice of the assigned independent review organization pursuant to subdivision (1)(b)(v) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(2)(a) Except for a request for an expedited external review made pursuant to subdivision (1)(b) of this section, within one business day after the date of receipt of the request the director receives a request for an external review, the director shall notify the health carrier.

(b) Within five business days following the date of receipt of the notice sent pursuant to subdivision (2)(a) of this section, the health carrier shall conduct and complete a preliminary review of the request to determine whether:

(i) The individual is or was a covered person in the health benefit plan at the time that the health care service or treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service or treatment was provided;

(ii) The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(A) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(B) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier;

(iii) The covered person's treating physician has certified that one of the following situations is applicable:

(A) Standard health care services or treatments have not been effective in improving the condition of the covered person;

(B) Standard health care services or treatments are not medically appropriate for the covered person; or

(C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the recommended or requested health care service or treatment described in subdivision (2)(b)(iv) of this section;

(iv) The covered person's treating physician:

(A) Has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care service or treatment; or

(B) Who is a licensed, board-certified or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care service or treatment;

(v) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(vi) The covered person has provided all the information and forms required by the director that are necessary to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative in writing whether the request is complete and the request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform, in writing, the director and the covered person and, if applicable, the covered person's authorized representative and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person, the covered person's authorized representative, if applicable,

and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under subdivision (3)(b) of this section and any supporting information to be included in the notice.

(ii) The notice of initial determination provided under subdivision (3)(b) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Whenever a request for external review is determined eligible for external review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative.

(4)(a) Within one business day after the receipt of the notice from the health carrier that the external review request is eligible for external review pursuant to subdivision (1)(b)(iv) of this section or subdivision (3)(e) of this section, the director shall:

(i) Assign an independent review organization to conduct the external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization may accept and consider additional information submitted after five business days.

(c) Within one business day after the receipt of the notice of assignment to conduct the external review pursuant to subdivision (4)(a) of this section, the assigned independent review organization shall:

(i) Select one or more clinical reviewers, as it determines is appropriate, pursuant to subdivision (4)(d) of this section to conduct the external review; and

(ii) Based upon the opinion of the clinical reviewer, or opinions if more than one clinical reviewer has been selected to conduct the external review, make a

decision to uphold or reverse the adverse determination or final adverse determination.

(d)(i) In selecting clinical reviewers pursuant to subdivision (4)(c)(i) of this section, the assigned independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in section 44-1313 and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(ii) Neither the covered person, the covered person's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review.

(e) In accordance with subsection (8) of this section, each clinical reviewer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(f) In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its designee utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its designee utilization review organization has failed to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Immediately upon making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person, the covered person's authorized representative, if applicable, the health carrier, and the director.

(6)(a) Each clinical reviewer selected pursuant to subsection (4) of this section shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section, within one business day after the receipt of the information, the assigned independent review organization shall forward the information to the health carrier.

(7)(a) Upon receipt of the information required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may be terminated only if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(d)(i) Immediately upon making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person, the covered person's authorized representative, if applicable, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8)(a) Except as provided in subdivision (8)(c) of this section, within twenty days after being selected in accordance with subsection (4) of this section to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization pursuant to subsection (9) of this section on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subdivision (8)(c) of this section, each clinical reviewer's opinion shall be in writing and include the following information:

(i) A description of the covered person's medical condition;

(ii) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risk of the recommended or requested health care service or treatment would not be substantially increased over that of available standard health care service or treatment;

(iii) A description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) A description and analysis of any evidence-based standard; and

(v) Information on whether the reviewer's rationale for the opinion is based on subdivision (9)(e)(i) or (ii) of this section.

(c) For an expedited external review, each clinical reviewer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances requires, but in no event more than five calendar days after being selected in accordance with subsection (4) of this section.



(d) If the opinion provided pursuant to subdivision (8)(a) of this section was not in writing, within forty-eight hours following the date that the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include the information required under subdivision (8)(b) of this section.

(9) In addition to the documents and information provided pursuant to subdivision (1)(b) of this section or subsection (5) of this section, each clinical reviewer selected pursuant to subsection (4) of this section, to the extent the information or documents are available and the reviewer considers appropriate, shall consider the following in reaching an opinion pursuant to subsection (8) of this section:

(a) The covered person's pertinent medical records;

(b) The attending physician or health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, if applicable, or the covered person's treating physician or health care professional;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier; and

(e) Whether:

(i) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(ii) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care service or treatment.

(10)(a)(i) Except as provided in subdivision (10)(a)(ii) of this section, within twenty days after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide written notice of the decision to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(ii)(A) For an expedited external review, within forty-eight hours after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide notice of the decision orally or in writing to the persons listed in subdivision (10)(a)(i) of this section.

(B) If the notice provided under subdivision (10)(a)(ii)(A) of this section was not in writing, within forty-eight hours after the date of providing that notice,

the assigned independent review organization shall provide written confirmation of the decision to the persons listed in subdivision (10)(a)(i) of this section and include the information set forth in subdivision (10)(c) of this section.

(b)(i) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

(ii) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

(iii)(A) If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers pursuant to subdivision (10)(b)(i) or (ii) of this section.

(B) The additional clinical reviewer selected under subdivision (10)(b)(iii)(A) of this section shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions pursuant to subsection (9) of this section.

(C) The selection of the additional clinical reviewer shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers selected under subsection (4) of this section pursuant to subdivision (4)(a) of this section.

(c) The independent review organization shall include in the notice provided pursuant to subdivision (10)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) The date the independent review organization was assigned by the director to conduct the external review;

(iv) The date the external review was conducted;

(v) The date of its decision;

(vi) The principal reason or reasons for its decision; and

(vii) The rationale for its decision.

(d) Upon receipt of a notice of a decision pursuant to subdivision (10)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination.

(11) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination

or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

**Source:** Laws 2013, LB147, § 10.

**Cross References**

**Health Carrier Grievance Procedure Act**, see section 44-7301.

**Utilization Review Act**, see section 44-5416.

**44-1311 External review decision; how treated; limitation on subsequent request.**

(1) An external review decision is binding on the health carrier except to the extent the health carrier has other remedies available under applicable state law.

(2) An external review decision is binding on the covered person except to the extent the covered person has other remedies available under applicable federal or state law.

(3) A covered person or the covered person's authorized representative, if applicable, shall not file a subsequent request for external review involving the same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to the Health Carrier External Review Act.

**Source:** Laws 2013, LB147, § 11.

**44-1312 Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.**

(1) The director shall approve independent review organizations eligible to be assigned to conduct external reviews under the Health Carrier External Review Act.

(2) In order to be eligible for approval by the director under this section to conduct external reviews under the act, an independent review organization:

(a) Except as otherwise provided in this section, shall be accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under section 44-1313; and

(b) Shall submit an application for approval in accordance with subsection (4) of this section.

(3) The director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4)(a) Any independent review organization wishing to be approved to conduct external reviews under the act shall submit the application form and include with the form all documentation and information necessary for the director to determine if the independent review organization satisfies the minimum qualifications established under section 44-1313.

(b)(i) Subject to subdivision (4)(b)(ii) of this section, an independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are

equivalent to or exceed the minimum qualifications for independent review organizations under section 44-1313.

(ii) The director may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

(c) The director may charge an application fee that independent review organizations shall submit to the director with an application for approval and reapproval.

(5)(a) An approval is effective for two years, unless the director determines before its expiration that the independent review organization is not satisfying the minimum qualifications established under section 44-1313.

(b) Whenever the director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under section 44-1313, the director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews under the act that is maintained by the director pursuant to subsection (6) of this section.

(6) The director shall maintain and periodically update a list of approved independent review organizations.

(7) The director may adopt and promulgate rules and regulations to carry out the provisions of this section.

**Source:** Laws 2013, LB147, § 12.

**44-1313 Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.**

(1) To be approved under section 44-1312 to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in the Health Carrier External Review Act that include, at a minimum:

(a) A quality assurance mechanism in place that:

(i) Ensures that external reviews are conducted within the specified timeframes and that required notices are provided in a timely manner;

(ii) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(iii) Ensures the confidentiality of medical and treatment records and clinical review criteria; and

(iv) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of the act;

(b) A toll-free telephone service to receive information on a twenty-four-hours-per-day, seven-days-per-week basis related to external reviews that is

capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours; and

(c) An agreement to maintain and provide to the director the information set out in section 44-1315.

(2) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(a) Be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(b) Be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person;

(c) Hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the United States in the area or areas appropriate to the subject of the external review; and

(d) Have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements set forth in subsection (1) of this section, an independent review organization may not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

(4)(a) In addition to the requirements set forth in subsections (1), (2), and (3) of this section, to be approved pursuant to section 44-1312 to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(i) The health carrier that is the subject of the external review;

(ii) The covered person whose treatment is the subject of the external review or the covered person's authorized representative, if applicable;

(iii) Any officer, director, or management employee of the health carrier that is the subject of the external review;

(iv) The health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

(v) The facility at which the recommended health care service or treatment would be provided; or

(vi) The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional,

familial, or financial conflict of interest for purposes of subdivision (4)(a) of this section, the director shall take into consideration situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subdivision (4)(a) of this section, but that the characteristics of that relationship or connection are such that they are not a material professional, familial, or financial conflict of interest that results in the disapproval of the independent review organization or the clinical reviewer from conducting the external review.

(5)(a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the director has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed in compliance with this section to be eligible for approval under section 44-1312.

(b) The director shall initially review and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The director may accept a review conducted by the National Association of Insurance Commissioners for the purpose of the determination under this subdivision.

(c) Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the director or the National Association of Insurance Commissioners in order for the director to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The director may exclude any private accrediting entity that is not reviewed by the National Association of Insurance Commissioners.

(6) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

**Source:** Laws 2013, LB147, § 13.

#### **44-1314 Liability for damages.**

No independent review organization, clinical reviewer working on behalf of an independent review organization, or employee, agent, or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to the Health Carrier External Review Act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence.

**Source:** Laws 2013, LB147, § 14.

#### **44-1315 Records; report; contents.**

(1)(a) An independent review organization assigned pursuant to section 44-1308, 44-1309, or 44-1310 to conduct an external review shall maintain written records in the aggregate by state and by health carrier on all requests for external review for which it conducted an external review during a calendar year and, upon request, submit a report to the director as required under subdivision (1)(b) of this section.

(b) Each independent review organization required to maintain written records on all requests for external review pursuant to subdivision (1)(a) of this section for which it was assigned to conduct an external review shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate by state, and for each health carrier:

(i) The total number of requests for external review;

(ii) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(iii) The average length of time for resolution;

(iv) A summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the director;

(v) The number of external reviews pursuant to section 44-1308 that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative; and

(vi) Any other information the director may request or require.

(d) The independent review organization shall retain the written records required pursuant to this subsection for at least three years.

(2)(a) Each health carrier shall maintain written records in the aggregate, by state and for each type of health benefit plan offered by the health carrier, on all requests for external review that the health carrier receives notice of from the director pursuant to the Health Carrier External Review Act.

(b) Each health carrier required to maintain written records on all requests for external review pursuant to subdivision (2)(a) of this section shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate, by state, and by type of health benefit plan:

(i) The total number of requests for external review;

(ii) From the total number of requests for external review reported under subdivision (2)(c)(i) of this section, the number of requests determined eligible for a full external review; and

(iii) Any other information the director may request or require.

(d) The health carrier shall retain the written records required pursuant to this section for at least three years.

**Source:** Laws 2013, LB147, § 15.

**44-1316 Health carrier; cost.**

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the cost of the independent review organization for conducting the external review.

**Source:** Laws 2013, LB147, § 16.

**44-1317 Health carrier; disclosure; format; contents.**

(1)(a) Each health carrier shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to covered persons.

(b) The disclosure required by subdivision (1)(a) of this section shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination with the director. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the director.

(3) In addition to the contents required by subsection (2) of this section, the statement shall inform the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

**Source:** Laws 2013, LB147, § 17.

**44-1318 Applicability of act.**

The Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014.

**Source:** Laws 2013, LB147, § 18.

**ARTICLE 14**

**NEBRASKA RIGHT TO SHOP ACT**

Section

- 44-1401. Act, how cited.
- 44-1402. Terms, defined.
- 44-1403. Applicability of act; election; notice.
- 44-1404. Health care entity; disclose allowed amount or charge; updated estimate; other cost estimate.
- 44-1405. Insurance carrier; interactive mechanism on web site; duties.
- 44-1406. Estimate of out-of-pocket amount.
- 44-1407. Shared savings incentive payment program; incentive payments; calculation.
- 44-1408. Availability of shared savings incentive payment program.
- 44-1409. Filing with department; review; confidentiality.
- 44-1410. Service from out-of-network provider; how treated.
- 44-1411. Incentive payment; how treated.
- 44-1412. Insurance carrier; annual filing; contents; report.
- 44-1413. Personnel division of Department of Administrative Services; program for state employees; report; contents.
- 44-1414. Rules and regulations.

**44-1401 Act, how cited.**



Sections 44-1401 to 44-1414 shall be known and may be cited as the Nebraska Right to Shop Act.

**Source:** Laws 2018, LB1119, § 11.  
Effective date July 19, 2018.

**44-1402 Terms, defined.**

For purposes of the Nebraska Right to Shop Act:

(1) Allowed amount means the contractually agreed upon amount paid by an insurance carrier to a health care entity participating in the insurance carrier's network or the amount the health plan is required to pay under the health plan policy or certificate of insurance for out-of-network covered benefits provided to the patient;

(2) Department means the Department of Insurance;

(3) Director means the Director of Insurance;

(4) Enrollee means an individual receiving health insurance coverage from an insurance carrier;

(5) Health care entity means:

(a) A facility licensed under the Health Care Facility Licensure Act;

(b) A health care professional licensed under the Uniform Credentialing Act; and

(c) An organization or association of health care professionals licensed under the Uniform Credentialing Act;

(6) Incentive payment means a payment described in section 44-1407 that is made by an insurance carrier to an enrollee;

(7) Insurance carrier means any entity that provides health insurance in this state. Insurance carrier includes (a) an insurance company, (b) a fraternal benefit society, (c) a health maintenance organization, and (d) any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

(8) Shared savings incentive payment program means a program established by an insurance carrier pursuant to section 44-1407 to provide incentive payments to enrollees; and

(9) Shoppable health care service means a health care service for which an insurance carrier offers incentive payments under a shared savings incentive payment program established by the insurance carrier. Shoppable health care service includes, at a minimum, health care services in the following categories:

(a) Physical and occupational therapy services;

(b) Obstetrical and gynecological services;

(c) Radiology and imaging services;

(d) Laboratory services;

(e) Infusion therapy;

(f) Inpatient or outpatient surgical procedures; and

(g) Outpatient nonsurgical diagnostic tests or procedures.

**Source:** Laws 2018, LB1119, § 12.  
Effective date July 19, 2018.

## Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

**44-1403 Applicability of act; election; notice.**

The Nebraska Right to Shop Act shall apply to any insurance carrier that elects to be subject to the act. An insurance carrier making such election shall file a notice of the election with the department.

**Source:** Laws 2018, LB1119, § 13.

Effective date July 19, 2018.

**44-1404 Health care entity; disclose allowed amount or charge; updated estimate; other cost estimate.**

(1) Prior to a nonemergency admission, procedure, or service and upon request by a patient or prospective patient, a health care entity within the patient's or prospective patient's insurer network shall, within three working days, disclose the allowed amount of the nonemergency admission, procedure, or service, including the amount for any facility fees required, to the patient or prospective patient.

(2) Prior to a nonemergency admission, procedure, or service and upon request by a patient or prospective patient, a health care entity outside the patient's or prospective patient's insurer network shall, within three working days, disclose the amount that will be charged for the nonemergency admission, procedure, or service, including the amount for any facility fees required, to the patient or prospective patient.

(3) If a health care entity is unable to quote a specific amount under subsection (1) or (2) of this section in advance due to the health care entity's inability to predict the specific treatment or diagnostic code, the health care entity shall disclose what is known for the estimated amount for a proposed nonemergency admission, procedure, or service, including the amount for any facility fees required. A health care entity shall disclose the incomplete nature of the estimate and shall inform the patient or prospective patient of his or her ability to obtain an updated estimate once additional information is determined.

(4) If a patient or prospective patient is covered by insurance, a health care entity that participates in an insurance carrier's network shall, upon request of a patient or prospective patient, provide, based on the information available to the health care entity at the time of the request, sufficient information regarding the proposed nonemergency admission, procedure, or service for the patient or prospective patient to receive a cost estimate from his or her insurance carrier to identify out-of-pocket costs, which could be through an insurance carrier's toll-free telephone number or web site. A health care entity may assist a patient or prospective patient in using an insurance carrier's toll-free telephone number or web site.

**Source:** Laws 2018, LB1119, § 14.

Effective date July 19, 2018.

**44-1405 Insurance carrier; interactive mechanism on web site; duties.**

An insurance carrier shall establish an interactive mechanism on its publicly accessible web site that enables an enrollee to request and obtain from the

insurance carrier information on the payments made by the insurance carrier to network providers for health care services. The interactive mechanism must allow an enrollee seeking information about the cost of a particular health care service to compare costs among network providers.

**Source:** Laws 2018, LB1119, § 15.  
Effective date July 19, 2018.

#### **44-1406 Estimate of out-of-pocket amount.**

(1) Within two working days of an enrollee's request, an insurance carrier shall provide a good faith estimate of the amount the enrollee will be responsible to pay out-of-pocket for a proposed nonemergency procedure or service that is a medically necessary covered benefit from an insurance carrier's network provider, including any copayment, deductible, coinsurance, or other out-of-pocket amount for any covered benefit, based on the information available to the insurance carrier at the time the request is made.

(2) Nothing in this section shall prohibit an insurance carrier from imposing cost-sharing requirements disclosed in the enrollee's certificate of coverage for unforeseen health care services that arise out of the nonemergency procedure or service or for a procedure or service provided to an enrollee that was not included in the original estimate.

(3) An insurance carrier shall notify the enrollee that the amounts provided under subsection (1) of this section are estimated costs and that the actual amount the enrollee will be responsible to pay may vary due to unforeseen services that arise out of the proposed nonemergency procedure or service.

**Source:** Laws 2018, LB1119, § 16.  
Effective date July 19, 2018.

#### **44-1407 Shared savings incentive payment program; incentive payments; calculation.**

(1) An insurance carrier shall develop and implement a shared savings incentive payment program that provides incentive payments for enrollees in a health plan who elect to receive shoppable health care services that are covered by the plan from providers that charge less than the average price paid by that insurance carrier for that shoppable health care service.

(2) Incentive payments may be calculated as a percentage of the difference in price, as a flat dollar amount, or by some other reasonable methodology approved by the director. The insurance carrier must provide the incentive payment as a cash payment to the enrollee.

(3) The shared savings incentive payment program must provide enrollees with at least fifty percent of the insurance carrier's saved costs for each shoppable health care service or category of shoppable health care service resulting from shopping by enrollees. An insurance carrier is not required to provide an incentive payment or credit to an enrollee when the insurance carrier's saved cost is fifty dollars or less.

(4) An insurance carrier shall base the average price on the average amount paid to an in-network provider for the procedure or service under the enrollee's health plan within a reasonable timeframe not to exceed one year. An insurance

carrier may determine an alternate methodology for calculating the average price if approved by the director.

**Source:** Laws 2018, LB1119, § 17.  
Effective date July 19, 2018.

#### **44-1408 Availability of shared savings incentive payment program.**

An insurance carrier shall make the shared savings incentive payment program available as a component of all health plans offered by the insurance carrier in this state. Annually at enrollment or renewal, an insurance carrier shall provide notice about the availability of the program to any enrollee who is enrolled in a health plan eligible for the program.

**Source:** Laws 2018, LB1119, § 18.  
Effective date July 19, 2018.

#### **44-1409 Filing with department; review; confidentiality.**

Prior to offering the shared savings incentive payment program to any enrollee, an insurance carrier shall file a description of the program with the department in the manner determined by the director. The department may review the filing made by the insurance carrier to determine if the insurance carrier's program complies with the requirements of the Nebraska Right to Shop Act. Filings and any supporting documentation submitted pursuant to this section are confidential until the filing has been reviewed by the department.

**Source:** Laws 2018, LB1119, § 19.  
Effective date July 19, 2018.

#### **44-1410 Service from out-of-network provider; how treated.**

If an enrollee elects to receive a shoppable health care service from an out-of-network provider that results in an incentive payment, the insurance carrier shall apply the amount paid for the shoppable health care service toward the enrollee's member cost sharing as specified in the enrollee's health plan as if the health care services were provided by an in-network provider.

**Source:** Laws 2018, LB1119, § 20.  
Effective date July 19, 2018.

#### **44-1411 Incentive payment; how treated.**

An incentive payment made by an insurance carrier in accordance with the Nebraska Right to Shop Act is not an administrative expense of the insurance carrier for rate development or rate filing purposes.

**Source:** Laws 2018, LB1119, § 21.  
Effective date July 19, 2018.

#### **44-1412 Insurance carrier; annual filing; contents; report.**

(1) On or before March 31 each year, each insurance carrier shall file with the department the following information for the most recent calendar year:

(a) The total number of incentive payments made pursuant to the insurance carrier's shared savings incentive payment program;

(b) The use of shoppable health care services by category of service for which incentive payments are made;

- (c) The total amount of incentive payments made to enrollees;
  - (d) The average amount of incentive payments made by category of shoppable health care service;
  - (e) The total savings achieved below the average prices by category of shoppable health care service; and
  - (f) The total number and percentage of an insurance carrier's enrollees that participated in the shared savings incentive payment program.
- (2) On or before July 1, 2019, and on or before July 1 of each year thereafter, the department shall electronically submit an aggregate report for all insurance carriers filing the information required by subsection (1) of this section to the Legislature.

**Source:** Laws 2018, LB1119, § 22.  
Effective date July 19, 2018.

**44-1413 Personnel division of Department of Administrative Services; program for state employees; report; contents.**

- (1) The personnel division of the Department of Administrative Services, in its discretion, may develop and implement a program for state employees receiving health insurance coverage under sections 84-1601 to 84-1615 that is similar to the shared savings incentive payment program described in section 44-1407. If the division develops and implements such a program, the division may use the State Employees Insurance Fund to make incentive payments to state employees pursuant to such program.
- (2) If a program for state employees is developed and implemented pursuant to this section, then on or before July 1 of each year after implementation of such program, the personnel division of the Department of Administrative Services shall electronically report to the Legislature the following information for the most recent calendar year:
- (a) The total number of incentive payments made pursuant to the program;
  - (b) The use of shoppable health care services by category of service for which incentive payments are made;
  - (c) The total amount of incentive payments made to state employees;
  - (d) The average amount of incentive payments made by category of shoppable health care service;
  - (e) The total savings achieved below the average prices by category of shoppable health care service; and
  - (f) The total number and percentage of state employees that participated in the program.

**Source:** Laws 2018, LB1119, § 23.  
Effective date July 19, 2018.

**44-1414 Rules and regulations.**

The department may adopt and promulgate rules and regulations as necessary to carry out the Nebraska Right to Shop Act.

**Source:** Laws 2018, LB1119, § 24.  
Effective date July 19, 2018.

## ARTICLE 15

## UNFAIR PRACTICES

## (b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

## Section

44-1540. Unfair claims settlement practice; acts and practices prohibited.

## (b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

**44-1540 Unfair claims settlement practice; acts and practices prohibited.**

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair;

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928; and

(18) Failing to pay interest on any proceeds due on a life insurance policy as required by section 44-3,143.

**Source:** Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59; Laws 2011, LB72, § 5.

## ARTICLE 19

### TITLE INSURANCE

#### (b) TITLE INSURERS ACT

Section

44-1981. Terms, defined.

#### (b) TITLE INSURERS ACT

#### **44-1981 Terms, defined.**

For purposes of the Title Insurers Act:

(1) Abstract of title means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters contained in such compilation;

(2) Affiliate means a specific person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified;

(3) Bona fide employee of the title insurer means an individual who devotes substantially all of his or her time to performing services on behalf of a title insurer and whose compensation for the services is in the form of salary or its equivalent paid by the title insurer;

(4) Control, including the terms controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) Direct operations means that portion of a title insurer's operations which are attributable to title insurance business written by a bona fide employee of the title insurer;

(6) Director means the Director of Insurance;

(7) Escrow means written instruments, money, or other items deposited by one party with a depository, escrow agent, or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(8) Escrow, settlement, or closing fee means the consideration for supervising or handling the actual execution, delivery, or recording of transfer and lien documents and for disbursing funds;

(9) Foreign title insurer means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(10) Net retained liability means the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, maintained by the title insurer;

(11) Non-United-States title insurer means any title insurer incorporated or organized under the laws of any foreign nation or any foreign province or territory;

(12) Person means any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(13) Producer of title insurance business has the same meaning as in section 44-19,108;

(14) Qualified financial institution means an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules and regulations adopted and promulgated by the director;

(15) Referral has the same meaning as in section 44-19,108;



(16) Security or security deposit means funds or other property received by a title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the title insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(17) Title insurance agent has the same meaning as in section 44-19,108;

(18) Title insurance business or business of title insurance means:

(a) Issuing as a title insurer or offering to issue as a title insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(i) Soliciting or negotiating the issuance of a title insurance policy;

(ii) Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

(iii) Handling of escrows, settlements, or closings;

(iv) Executing title insurance policies;

(v) Effecting contracts of reinsurance;

(vi) Searching or examining titles; or

(vii) Guaranteeing, warranting, or otherwise insuring the correctness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Transacting or proposing to transact any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of the Title Insurers Act;

(f) Guaranteeing, warranting, or insuring the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures; or

(g) Guaranteeing or warranting adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures by any person other than the principals to the transaction;

(19) Title insurance commitment means a preliminary commitment, report, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and any other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy;

(20) Title insurance policy means:

(a) A contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(i) Defects in or liens or encumbrances on the insured title;

- (ii) Unmarketability of the insured title;
- (iii) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;
- (iv) Lack of legal right of access to the land; or
- (v) Unenforceability of rights in title to the land; or

(b) A contract insuring or indemnifying owners of personal property or secured parties or others interested therein against loss or damage pertaining to adverse claims to title, liens, encumbrances upon, or security interests in personal property or fixtures, including the existence or nonexistence of the attachment, perfection, or priority of security interests in personal property or fixtures under the Uniform Commercial Code or other laws, rules, or regulations establishing procedures for the attachment, perfection, or priority of security interests in personal property or fixtures, or the accuracy or completeness of the search or filing results obtained from public registries established for determining liens or security interests in personal property or fixtures, and arising from any or all of the following conditions not excepted or excluded:

- (i) Other liens or encumbrances on the stated personal property or fixtures;
- (ii) Invalidity, lack of priority, or unenforceability of liens or other security interests in the stated personal property or fixtures; or
- (iii) Any other matters relating directly or indirectly to the lien status of the stated personal property or fixtures;

(21) Title insurer means any insurer organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United-States title insurer authorized to transact the business of title insurance in this state; and

(22) Title plant means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

**Source:** Laws 1997, LB 53, § 4; Laws 2001, LB 360, § 9; Laws 2015, LB180, § 2.

## ARTICLE 20

### UNAUTHORIZED INSURERS

#### (a) UNAUTHORIZED INSURERS ACT

Section

44-2006. Attorney General; powers; terms, defined.

#### (a) UNAUTHORIZED INSURERS ACT

##### **44-2006 Attorney General; powers; terms, defined.**

The Attorney General upon request of the Director of Insurance may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the director.

(1) As used in this section:

(a) Reciprocal state shall mean any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this

section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States against any insurer incorporated or authorized to do business in such state or territory;

(b) Foreign decree shall mean any decree or order in equity of a court located in a reciprocal state, including a court of the United States located in such reciprocal state, against any insurer incorporated or authorized to do business in this state; and

(c) Qualified party shall mean a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(2) The Director of Insurance shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(3) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall record the foreign decree in the same manner as a decree of a district court of this state. A foreign decree so filed shall have the same effect and shall be deemed as a decree of a district court of this state, shall be subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a decree of a district court of this state, and may be enforced or satisfied in like manner.

(4)(a) At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last-known post office address of the defendant.

(b) Promptly upon the filing of the foreign decree and the affidavit, the clerk of the court shall mail notice of the filing of the foreign decree to the defendant at the address given and to the Director of Insurance and shall file notice of the mailing on the record. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the Director of Insurance 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 Attorney General has been filed.

(c) No execution or other process for enforcement of a foreign decree filed under this section shall issue until thirty days after the date the decree is filed.

(5)(a) If the defendant shows the district court that an appeal from the foreign decree is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(b) If the defendant shows the district court any ground upon which enforcement of a decree of any district court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(6) Any person filing a foreign decree shall pay to the clerk of the district court the docket fee established in section 33-106. Fees for transcribing or

other enforcement proceedings shall be as provided for decrees of the district court.

**Source:** Laws 1969, c. 351, § 6, p. 1229; Laws 1989, LB 279, § 2; Laws 2018, LB193, § 82.

Operative date July 19, 2018.

## ARTICLE 21 HOLDING COMPANIES

Section	
44-2120.	Act, how cited.
44-2121.	Terms, defined.
44-2126.	Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.
44-2127.	Merger; acquisition; approval by director; hearings; experts.
44-2128.	Merger; acquisition; exempt transactions.
44-2129.	Acquisition; divestiture; merger; prohibited acts.
44-2132.	Registration of insurers; filings required.
44-2133.	Transactions within an insurance holding company system; standards.
44-2135.	Management of domestic insurer.
44-2137.	Examination by director; director; powers; penalty.
44-2137.01.	Director; participate in supervisory college; powers; insurer; payment of expenses.
44-2138.	Information; confidential treatment; sharing of information; restrictions.
44-2139.	Director; rules and regulations.
44-2147.01.	Violations; effect.
44-2154.	International insurance group; criteria; determination by director.
44-2155.	International insurance group; director; identify group-wide supervisor; factors; director; powers; duties; supervision activities; expenses.

### **44-2120 Act, how cited.**

Sections 44-2120 to 44-2155 shall be known and may be cited as the Insurance Holding Company System Act.

**Source:** Laws 1991, LB 236, § 1; Laws 2012, LB887, § 3; Laws 2016, LB772, § 10.

### **44-2121 Terms, defined.**

For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific

findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director means the Director of Insurance;

(4) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition;

(5) Group-wide supervisor means the chief insurance regulatory official, including the director, who (a) is authorized to conduct and coordinate group-wide supervision activities of an international insurance group and (b) is from the jurisdiction determined or acknowledged by the director under section 44-2155 to have sufficient contacts with the international insurance group;

(6) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(7) Insurer has the same meaning as in section 44-103, except that insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(8) International insurance group means an insurance holding company system that has been determined by the director to be an international insurance group under section 44-2154;

(9) Person means an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but does not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(10) Security holder of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(11) Subsidiary of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(12) Voting security includes any security convertible into or evidencing a right to acquire a voting security.

**Source:** Laws 1991, LB 236, § 2; Laws 2001, LB 360, § 13; Laws 2012, LB887, § 4; Laws 2016, LB772, § 11.

**44-2126 Acquisition of control of or merger with domestic insurer; notice of proposed divestiture; filing requirements; director; powers.**

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person

would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the director and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the director in the manner prescribed in section 44-2127.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest his, her, or its controlling interest in the domestic insurer, in any manner, shall file with the director, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The director shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the director, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (1) of this section is otherwise filed, this subsection shall not apply.

(3) For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless such person as determined by the director is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, person does not include any securities broker holding, in the usual and customary brokers function, less than twenty percent of the voting securities of an insurance company or of any person which controls an insurance company.

(4) The statement required to be filed with the director under subsection (1) of this section shall be made under oath and shall contain the following:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected and either:

(i) If such person is an individual, his or her principal occupation, all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; or

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence, an informative description of the business intended to be done by such person and such person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of such person or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subdivision (i) of this subdivision;

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration, except that when a source of such consideration is a loan made in the

lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof have been in existence and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement;

(d) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(e) The number of shares of any security referred to in subsection (1) of this section which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months preceding the filing of the statement by any acquiring party or by anyone based upon interviews or at the suggestion of such acquiring party;

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section and, if distributed, of additional soliciting material relating thereto;

(k) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (1) of this section for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(l) An agreement by the person required to file the statement referred to in subsection (1) of this section that he, she, or it will provide the annual report specified in subsection (12) of section 44-2132 for as long as control exists;

(m) An acknowledgment by the person required to file the statement referred to in subsection (1) of this section that the person and all subsidiaries within

his, her, or its control in the insurance holding company system will provide information to the director upon request as necessary to evaluate enterprise risk to the insurer; and

(n) Such additional information as the director may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(5) If the person required to file the statement is a partnership, limited partnership, syndicate, or other group, the director may require that the information called for by subsection (4) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement is a corporation, the director may require that the information called for by subsection (4) of this section shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of such corporation.

(6) If any material change occurs in the facts set forth in the statement filed with the director and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the director and sent to such insurer within two business days after the person learns of such change.

(7) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement may utilize such documents in furnishing the information called for by the statement.

**Source:** Laws 1991, LB 236, § 7; Laws 2012, LB887, § 5.

**44-2127 Merger; acquisition; approval by director; hearings; experts.**

(1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 44-2126 unless, after a public hearing thereon, he or she finds that:

(a) After the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, to sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure of management



are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(f) To the extent required under section 44-6115, an acquisition has not been approved by the director; or

(g) The acquisition is likely to be hazardous or prejudicial to the public.

(2) Except as provided in subsection (3) of this section, the public hearing referred to in subsection (1) of this section shall be held within thirty days after the statement required by subsection (1) of section 44-2126 is filed, and at least twenty days' notice thereof shall be given by the director to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the director. The director shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one director or commissioner of insurance, the public hearing required by this section may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (1) of section 44-2126. Such person shall file the statement with the National Association of Insurance Commissioners within five days after making the request for a public hearing. A director or commissioner may opt out of a consolidated hearing and shall provide notice to the applicant of the opt out within ten days after the receipt of the statement. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the directors or commissioners of the states in which the insurers are domiciled. Such directors or commissioners shall hear and receive evidence. A director or commissioner may attend such hearing in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the director that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws, rules, and regulations of this state shall be made not later than sixty days after the date of the director's determination. The director may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as may be reasonably necessary to assist the director in reviewing the proposed acquisition of control.

**Source:** Laws 1991, LB 236, § 8; Laws 1997, LB 52, § 3; Laws 2002, LB 1139, § 22; Laws 2012, LB887, § 6.

**44-2128 Merger; acquisition; exempt transactions.**

Section 44-2126 shall not apply to:

(1) Any transaction which is subject to the provisions of the Nebraska Model Business Corporation Act and sections 44-224.01 to 44-224.10, except as otherwise provided in Chapter 44, dealing with the merger or consolidation of two or more insurers; or

(2) Any offer, request, invitation, agreement, or acquisition which the director by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer or (b) otherwise not comprehended within the purposes of section 44-2126.

**Source:** Laws 1991, LB 236, § 9; Laws 1995, LB 109, § 221; Laws 2014, LB749, § 287.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**44-2129 Acquisition; divestiture; merger; prohibited acts.**

(1) It shall be a violation of section 44-2126 to fail to file any statement, amendment, or other material required to be filed under such section.

(2) It shall be a violation of section 44-2127 to effectuate or attempt to effectuate an acquisition of control of, divestiture of, or merger with a domestic insurer unless the director has given his or her approval thereto.

**Source:** Laws 1991, LB 236, § 10; Laws 2012, LB887, § 7.

**44-2132 Registration of insurers; filings required.**

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement with the director on a form and in a format prescribed by the National

Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(f) Statements that show that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director; and

(h) Any other information required by rules and regulations which the director may adopt and promulgate.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty days after receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request and shall be entitled to an administrative hearing. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the director or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state director or commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(13) The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk report required by this section within the time specified for such filing shall be a violation of this section.

**Source:** Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11; Laws 2012, LB887, § 8.

**44-2133 Transactions within an insurance holding company system; standards.**

(1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost-sharing services and management shall include such provisions as are required by rules and regulations which the director may adopt and promulgate;

(c) Charges or fees for services performed shall be reasonable;

(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(f) The insurer's policyholders surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section which are subject to any materiality standards contained in subdivisions (2)(a) through (e) of this section, shall not be entered into unless the insurer has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto or such shorter period as the director may permit and the director has not disapproved it within such period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty days after a termination of a previously filed agreement, to the director for determination of the type of filing required, if any:

(a) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets

of, or to make investments in any affiliate of the insurer making such loans or extensions of credit if such transactions are equal to or exceed (i) with respect to an insurer other than a life insurer, the lesser of three percent of the insurer's admitted assets or twenty-five percent of policyholders surplus as of December 31 next preceding and (ii) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto, including (i) all reinsurance pooling agreements and (ii) agreements in which the reinsurance premium or a change in the insurer's liabilities or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years equals or exceeds five percent of the insurer's policyholders surplus as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax-allocation agreements, and cost-sharing arrangements; and

(e) Any material transactions, specified by rule and regulation, which the director determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the director determines that such separate transactions were entered into over any twelve-month period for such purpose, the director may exercise his or her authority under sections 44-2143 to 44-2147.

(4) The director, in reviewing transactions pursuant to subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(5) The director shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation's voting securities.

**Source:** Laws 1991, LB 236, § 13; Laws 2012, LB887, § 9.

#### **44-2135 Management of domestic insurer.**

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the Insurance Holding Company System Act.

(2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel,

property, or services with one or more other persons under arrangements meeting the standards of subsection (1) of section 44-2133.

(3) Not less than one-third of the directors of a domestic insurer which is a member of an insurance holding company system shall be persons who are not officers or employees of such insurer or of any entity controlling, controlled by, or under common control with such insurer and who are not beneficial owners of a controlling interest in the voting stock of such insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors.

(4) Subsection (3) of this section shall not apply to a domestic insurer if the person controlling such insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors that meets the requirements of such subsection with respect to such controlling entity.

(5) An insurer may make application to the director for a waiver from the requirements of this section if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program as defined in section 31-1014, is less than three hundred million dollars. An insurer may also make application to the director for a waiver from the requirements of this section based upon unique circumstances. The director may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or ownership or organizational structure of the entity.

**Source:** Laws 1991, LB 236, § 15; Laws 2012, LB887, § 10.

**44-2137 Examination by director; director; powers; penalty.**

(1)(a) Subject to the limitation contained in this section and in addition to the powers which the director has under the Insurers Examination Act relating to the examination of insurers, the director may examine any insurer registered under section 44-2132 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) The director may order any insurer registered under section 44-2132 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with Chapter 44.

(c) To determine compliance with Chapter 44, the director may order any insurer registered under section 44-2132 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or another method. If the insurer cannot obtain the information requested by the director, the insurer shall provide the director a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. If it appears to the director that the detailed explanation is without merit, the director may require, after notice and hearing, the insurer to pay a penalty of one hundred dollars for each day's delay, not to exceed an aggregate penalty of ten thousand dollars, or may suspend or revoke the insurer's certificate of authority.

(2) The director may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts who are not employees of the Department of Insurance as shall be reasonably necessary to assist in the conduct of the examination under this section. Any persons so retained shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers pursuant to this section shall be liable for and shall pay the expense of such examination in accordance with the Insurers Examination Act.

(4) If the insurer fails to comply with an order, the director may examine the affiliates to obtain the information. The director may also issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable by contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, which fees, mileage, and actual expenses, if any, necessarily incurred in securing the attendance of witnesses and their testimony, shall be itemized, charged against, and paid by the entity being examined.

**Source:** Laws 1991, LB 236, § 17; Laws 1993, LB 583, § 85; Laws 2012, LB887, § 11.

#### Cross References

Insurers Examination Act, see section 44-5901.

#### **44-2137.01 Director; participate in supervisory college; powers; insurer; payment of expenses.**

(1) With respect to any insurer registered under section 44-2132 and in accordance with subsection (3) of this section, the director may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance with Chapter 44 by the insurer. The powers of the director with respect to supervisory colleges include, but are not limited to, the following:

(a) Initiating the establishment of a supervisory college;

(b) Clarifying the membership and participation of other supervisors in the supervisory college;

(c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(e) Establishing a crisis management plan.

(2) Each insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in a supervisory college in accordance with subsection (3) of this section, including reasonable travel expenses.



(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with section 44-2137, the director may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The director may enter into agreements in accordance with section 44-2138 providing the basis for cooperation between the director and the other regulatory agencies and the activities of the supervisory college.

(4) For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the director may establish a regular assessment to the insurer for the payment of such expenses.

(5) Nothing in this section shall delegate to the supervisory college the authority of the director to regulate or supervise the insurer or its affiliates within its jurisdiction.

**Source:** Laws 2012, LB887, § 12.

**44-2138 Information; confidential treatment; sharing of information; restrictions.**

(1) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported or provided to the director pursuant to sections 44-2132 to 44-2136 and 44-2155 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(2) The director may receive information, documents, and copies of information and documents disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the

director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

(3) In order to assist in the performance of the director's duties, the director may share information with state, federal, and international regulatory agencies, the National Association of Insurance Commissioners and its affiliates and subsidiaries, state, federal, and international law enforcement authorities, including members of any supervisory college described in section 44-2137.01, the International Association of Insurance Supervisors, and the Bank for International Settlements under the conditions set forth in section 44-154 if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality. The director may only share confidential and privileged documents, material, or information reported pursuant to subsection (12) of section 44-2132 with directors or commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such information.

(4) The director shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this section that shall:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the association with other state, federal, or international regulators;

(b) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section remains with the director and the association's use of the information is subject to the direction of the director;

(c) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this section is subject to a request or subpoena to the association for disclosure or production; and

(d) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the association and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the association and its affiliates and subsidiaries pursuant to this section.

(5) The sharing of information by the director pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of this section.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized by this section.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this section shall be confidential and privileged, shall not be subject to public disclosure under section 84-712, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

**Source:** Laws 1991, LB 236, § 18; Laws 2001, LB 52, § 47; Laws 2012, LB887, § 13; Laws 2016, LB772, § 14.

#### **44-2139 Director; rules and regulations.**

The director may adopt and promulgate such rules and regulations and issue such orders as necessary to carry out the Insurance Holding Company System Act.

**Source:** Laws 1991, LB 236, § 19; Laws 2012, LB887, § 14.

#### **44-2147.01 Violations; effect.**

If it appears to the director that any person has committed a violation of sections 44-2126 to 44-2130 which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

**Source:** Laws 2012, LB887, § 15.

#### **Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

#### **44-2154 International insurance group; criteria; determination by director.**

The director may determine whether or not an insurance holding company system is an international insurance group. An insurance holding company system shall be considered an international insurance group if the insurance holding company system includes an insurer registered under section 44-2132 and:

(1) Meets the following criteria:

(a) The insurance holding company system has premiums written in at least three countries;

(b) The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's gross written premiums; and

(c) Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars; or

(2) Does not meet the criteria in subdivision (1) of this section but is determined by the director to have significant international insurance business operations. Such a determination may be made anytime by the director or after a request by an insurance holding company system.

**Source:** Laws 2016, LB772, § 12.

**44-2155 International insurance group; director; identify group-wide supervisor; factors; director; powers; duties; supervision activities; expenses.**

(1) In cooperation with other state, federal, and international regulatory agencies, the director may identify a group-wide supervisor for an international insurance group in accordance with this section. The director may determine that the director is the appropriate group-wide supervisor, or he or she may acknowledge that a chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor.

(2) The director may determine that the director is the appropriate group-wide supervisor for:

(a) An international insurance group that conducts substantial insurance operations in this state;

(b) An international insurance group with substantial insurance operations conducted by subsidiary insurance companies domiciled in this state whose ultimate controlling person is domiciled outside of this state;

(c) An international insurance group with an insurance company domiciled in this state that conducts substantial insurance operations from offices in this state;

(d) An international insurance group whose ultimate controlling person is domiciled in this state or whose top-tiered insurance company subsidiary is domiciled in this state; or

(e) Any other international insurance group, under the factors set forth in subsection (4) of this section.

(3) The director may acknowledge that a chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor if the international insurance group:

(a) Does not have substantial insurance operations in the United States;

(b) Has substantial insurance operations in the United States, but not in this state; or

(c) Has substantial insurance operations in the United States and this state, but the director has determined pursuant to the factors set forth in subsections (4) and (10) of this section that the chief insurance regulatory official from another jurisdiction is the appropriate group-wide supervisor.

(4) The director shall consider, but shall not be limited to, the following factors when making a determination or acknowledgment regarding a group-wide supervisor under this section:

(a) The place of domicile of the ultimate controlling person of the international insurance group, if the chief insurance regulatory official of that place has significant insurance regulatory authority over such ultimate controlling person;

(b) The place of domicile of the insurer within the international insurance group that holds the largest share of the group's written premiums, assets, or liabilities;

(c) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the international insurance group;

(d) The location of the executive offices of the international insurance group;

(e) Whether another chief insurance regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the director determines is accredited by the National Association of Insurance Commissioners or has substantially similar laws when compared to the insurance laws of this state, especially with regard to the provision of group-wide supervision, enterprise risk analysis, and cooperation with other chief insurance regulatory officials;

(f) Whether another chief insurance regulatory official acting or seeking to act as the group-wide supervisor provides the director with reasonably reciprocal recognition and cooperation;

(g) Whether substantial insurance operations are conducted by subsidiary insurance companies domiciled in this state;

(h) Whether another chief insurance regulatory official acting or seeking to act as the group-wide supervisor and key staff maintain the requisite skill, experience, and tenure necessary to act as group-wide supervisor; and

(i) Whether the international insurance group's current group-wide supervisor is carrying out such duty reasonably.

(5) An international insurance group for which the director has not determined or acknowledged a group-wide supervisor may request that the director make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(6) A group-wide supervisor may determine that it is appropriate to acknowledge another chief insurance regulatory official to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subsection (4) of this section and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the international insurance group and in consultation with the international insurance group.

(7) Notwithstanding any other provision of law, when another chief insurance regulatory official is acting as the group-wide supervisor of an international insurance group, the director may acknowledge that chief insurance regulatory official as the group-wide supervisor. Such acknowledgment shall not remove any obligation of an insurer to provide information to the director pursuant to the Insurance Holding Company System Act. However, if there is a material change in the international insurance group that results in (a) the international insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities or (b) this state being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the international insurance group, the director shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an international insurance group pursuant to this section.

(8) Pursuant to section 44-2137, the director is authorized to collect from any insurer registered pursuant to section 44-2132 all information necessary to determine whether the director may act as the group-wide supervisor of an international insurance group or if the director may acknowledge another chief insurance regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an international insurance group is subject to group-wide supervision by the director, the director shall notify the insurer registered pursuant to section 44-2132 and the ultimate controlling person within the international insurance group. The international insurance group

shall have not less than thirty days to provide the director with additional information pertinent to the pending determination. The director shall publish on the web site of the Department of Insurance the identity of international insurance groups that the director has determined are subject to group-wide supervision by the director.

(9) If the director is the group-wide supervisor for an international insurance group, the director may engage in any of the following group-wide supervision activities:

(a) Assess the enterprise risks within the international insurance group to ensure that:

(i) The material financial condition and liquidity risks to the members of the international insurance group that are engaged in the business of insurance are identified by management; and

(ii) Reasonable and effective mitigation measures are in place;

(b) Request, from any member of an international insurance group subject to the director's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the international insurance group regarding:

(i) Governance, risk assessment, and management;

(ii) Capital adequacy; and

(iii) Material intercompany transactions;

(c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the international insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the international insurance group is able to timely recognize and mitigate enterprise risks to members of such international insurance group that are engaged in the business of insurance;

(d) Communicate with other state, federal, and international regulatory agencies for members within the international insurance group and share relevant information, subject to the confidentiality provisions of section 44-2138, through supervisory colleges as set forth in section 44-2137.01 or otherwise;

(e) Enter into agreements with or obtain documentation from any insurer registered under section 44-2132, any member of the international insurance group, and any other state, federal, and international regulatory agencies for members of the international insurance group, providing the basis for or otherwise clarifying the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(f) Other group-wide supervision activities, consistent with the authorities and purposes enumerated in this section, as considered necessary by the director.

(10) If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the director may reasonably

cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor if:

(a) The director's cooperation is in compliance with the laws of this state; and

(b) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other international insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the director may refuse recognition and cooperation.

(11) The director may enter into agreements with or obtain documentation from any insurer registered under section 44-2132, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the international insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(12) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

**Source:** Laws 2016, LB772, § 13.

## ARTICLE 26

### INSURANCE CONSULTANTS

#### Section

44-2607. Insurance consultant, defined.

44-2614. Insurance consultant; acts requiring licensure.

#### **44-2607 Insurance consultant, defined.**

Insurance consultant shall mean any person who, for a fee, engages in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, or concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance, or any formal plan of managing pure risk. Insurance consultant does not include a public adjuster licensed under the Public Adjusters Licensing Act.

**Source:** Laws 1980, LB 481, § 2; Laws 2018, LB743, § 20.

Effective date July 19, 2018.

#### Cross References

**Public Adjusters Licensing Act**, see section 44-9201.

#### **44-2614 Insurance consultant; acts requiring licensure.**

No person shall, in or on advertisements, cards, signs, circulars, letterheads, or elsewhere or in any other manner by which public announcements are made, use the title insurance consultant or any similar title or any title, word, combination of words, or abbreviation indicating that he or she gives or is engaged in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance,

unless such person holds a license as an insurance consultant under sections 44-2606 to 44-2635.

**Source:** Laws 1980, LB 481, § 9; Laws 1989, LB 92, § 205; Laws 2018, LB743, § 21.

Effective date July 19, 2018.

## ARTICLE 27

### NEBRASKA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

#### Section

- 44-2702. Terms, defined.  
 44-2703. Coverages authorized.  
 44-2704. Act; how construed.  
 44-2719.02. Insurer under court order; provisions applicable; act; applicability.

#### **44-2702 Terms, defined.**

As used in the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account means any of the three accounts created pursuant to section 44-2705;

(2) Association means the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Authorized, when used in the context of assessments, or authorized assessment means a resolution by the board of directors has passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) Called, when used in the context of assessments, or called assessment means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;

(5) Director means the Director of Insurance;

(6) Contractual obligation means any obligation under a policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(7) Covered policy means any policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(8) Impaired insurer means a member insurer which, after August 24, 1975, (a) is deemed by the director to be potentially unable to fulfill its contractual obligations and is not an insolvent insurer or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(9) Insolvent insurer means a member insurer which after August 24, 1975, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(10) Member insurer means any person authorized to transact in this state any kind of insurance provided for under section 44-2703. Member insurer



includes any person whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include:

- (a) A nonprofit hospital or medical service organization;
- (b) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;
- (c) A fraternal benefit society;
- (d) A mandatory state pooling plan;
- (e) An unincorporated mutual association;
- (f) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;
- (g) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;
- (h) A viatical settlement provider, a viatical settlement broker, or a financing entity under the Viatical Settlements Act; or
- (i) An entity similar to any entity listed in subdivisions (10)(a) through (h) of this section;

(11) Moody's corporate bond yield average means the monthly average of corporate bond yields published by Moody's Investment Service, Incorporated, or any successor to Moody's Investment Service, Incorporated;

(12) Owner of a policy or contract, policy owner, and contract owner means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. Owner, policy owner, and contract owner does not include persons with a mere beneficial interest in a policy or contract;

(13) Person means any individual, corporation, partnership, limited liability company, association, or voluntary organization;

(14) Premiums means amounts or considerations received on covered policies or contracts less returned premiums, considerations, and deposits, less dividends and experience credits. Premiums does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection (2) of section 44-2703, except that assessable premiums shall not be reduced on account of subdivision (2)(b)(iii) of section 44-2703 relating to interest limitations and subdivision (3)(b) of section 44-2703 relating to limitations with respect to one individual, one participant, and one contract owner. Premiums does not include:

- (a) Premiums on an unallocated annuity contract; or
- (b) With respect to multiple nongroup life insurance policies owned by one owner, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, premiums exceeding five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(15)(a) Principal place of business of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall determine the principal place of business considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors or similar governing person or persons of the entity conducts the majority of meetings;

(iv) The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in subdivisions (15)(a)(i) through (v) of this section, except that in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(16) Receivership court means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

(17) Resident means any person to whom a contractual obligation is owed who resides in this state at the date of entry of a court order that determines that a member insurer is an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one state. A person other than a natural person shall be a resident of its principal place of business. Citizens of the United States that are residents of foreign countries, or are residents of a United States possession that does not have an association similar to the association created by the Nebraska Life and Health Insurance Guaranty Association Act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(18) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

(19) Structured settlement annuity means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(20) Supplemental contract means any agreement entered into between a member insurer and an owner or beneficiary for the distribution of policy or contract proceeds under a covered policy or contract; and

(21) Unallocated annuity contract means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

**Source:** Laws 1975, LB 217, § 2; Laws 1986, LB 593, § 4; Laws 1993, LB 121, § 244; Laws 2001, LB 360, § 14; Laws 2012, LB887, § 16.

**Cross References**

**Viatical Settlements Act**, see section 44-1101.

**44-2703 Coverages authorized.**

(1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides; or

(ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1002(40);

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form, filing, or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(xi) An unallocated annuity contract, a funding agreement, a guaranteed interest contract, a guaranteed investment contract, a synthetic guaranteed investment contract, or a deposit administration contract;

(xii) Any such policy or contract issued by:

(A) A nonprofit hospital or medical service organization;

(B) A health maintenance organization unless such organization is controlled by an insurance company licensed by the Department of Insurance under Chapter 44;

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) An unincorporated mutual association;

(F) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment; or

(G) A reciprocal or interinsurance exchange which issues only policies or contracts subject to assessment;

(xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44;

(xiv) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Title 42, Chapter 7, Subchapter XVIII, Part C or D of the United States Code or any regulations issued pursuant thereto; or

(xv) A viatical settlement contract as defined in section 44-1102 or a viaticated policy as defined in section 44-1102.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In health insurance benefits: (I) Five hundred thousand dollars for basic hospital, medical, or surgical insurance or major medical insurance. For purposes of this subdivision: Basic hospital, medical, or surgical insurance means a policy which pays a certain portion of hospital room and board costs each day. This type of policy also pays for hospital services and supplies including X-rays, lab tests, medicine, and other items up to a stated amount; and major medical insurance means health insurance to finance the expense of major illness and injury characterized by large benefit maximums and reimburses the major part of all charges for hospitals, doctors, private nurses, medical appliances, prescribed out-of-hospital treatment, drugs, and medicines above an initial deductible; (II) three hundred thousand dollars for disability insurance or long-term care insurance as defined in section 44-4509. For purposes of this subdivision, disability insurance means the type of policy which pays a monthly or weekly amount if an individual is disabled and cannot work; and (III) one hundred thousand dollars for coverages not defined as disability insurance, long-term care insurance, basic hospital, medical, or surgical insurance, or major medical insurance, including any net cash surrender and net cash withdrawal values; or

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iii) The association shall not be obligated to cover more than:

(A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i) and (ii) of this section, except that with respect to benefits for basic hospital, medical, or surgical insurance and major medical insurance under subdivision (3)(b)(i)(B)(I) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;

(iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

**Source:** Laws 1975, LB 217, § 3; Laws 1986, LB 593, § 5; Laws 2001, LB 360, § 15; Laws 2004, LB 1047, § 8; Laws 2012, LB887, § 17.

**44-2704 Act; how construed.**

The Nebraska Life and Health Insurance Guaranty Association Act shall be construed to effect the purposes enumerated in section 44-2701.

**Source:** Laws 1975, LB 217, § 4; Laws 1986, LB 593, § 6; Laws 2012, LB887, § 18.

**44-2719.02 Insurer under court order; provisions applicable; act; applicability.**

(1) Any insurer under an order of liquidation, rehabilitation, or conservation on February 12, 1986, shall be subject to the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the day prior to February 12, 1986.

(2) Notwithstanding any other provision of law, the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the date the association first becomes obligated for the policies or contracts of an insolvent

or impaired member govern the association's rights or obligations to the policyowners of the insolvent or impaired member insurer.

**Source:** Laws 1986, LB 593, § 15; Laws 2012, LB887, § 19.

## ARTICLE 28

### NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section

44-2825. Action for injury or death; maximum amount recoverable; settlement; manner.

**44-2825 Action for injury or death; maximum amount recoverable; settlement; manner.**

(1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) five hundred thousand dollars for any occurrence on or before December 31, 1984, (b) one million dollars for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) one million two hundred fifty thousand dollars for any occurrence after December 31, 1992, and on or before December 31, 2003, (d) one million seven hundred fifty thousand dollars for any occurrence after December 31, 2003, and on or before December 31, 2014, and (e) two million two hundred fifty thousand dollars for any occurrence after December 31, 2014.

(2) A health care provider qualified under the act shall not be liable to any patient or his or her representative who is covered by the act for an amount in excess of five hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

**Source:** Laws 1976, LB 434, § 25; Laws 1984, LB 692, § 8; Laws 1986, LB 1005, § 2; Laws 1992, LB 1006, § 18; Laws 2003, LB 146, § 1; Laws 2004, LB 998, § 2; Laws 2014, LB961, § 3.

## ARTICLE 29

### NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL INSURANCE ASSOCIATION ACT

Section

44-2916. Associations; provisions applicable.

**44-2916 Associations; provisions applicable.**

To the extent applicable and when not in conflict with the Nebraska Hospital and Physicians Mutual Insurance Association Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to associations incorporated pursuant to the Nebraska Hospital and Physicians Mutual Insurance Association Act.

**Source:** Laws 1976, LB 809, § 16; Laws 1989, LB 92, § 218; Laws 1995, LB 109, § 222; Laws 2014, LB749, § 288.



## Cross References

Nebraska Model Business Corporation Act, see section 21-201.

## ARTICLE 30

## UNCLAIMED LIFE INSURANCE BENEFITS ACT

## Section

- 44-3001. Act, how cited.
- 44-3002. Terms, defined.
- 44-3003. Comparison against death master file; match; insurer; duties; group life insurance; insurer duties.
- 44-3004. Benefits; accrued contractual interest; how treated.
- 44-3005. Director of Insurance; powers.
- 44-3006. Unfair trade practice.

**44-3001 Act, how cited.**

Sections 44-3001 to 44-3006 shall be known and may be cited as the Unclaimed Life Insurance Benefits Act.

**Source:** Laws 2017, LB137, § 1.

**44-3002 Terms, defined.**

For purposes of the Unclaimed Life Insurance Benefits Act:

(1) Beneficiary means the party entitled or contingently entitled to receive proceeds from a policy or retained asset account;

(2) Death master file means the United States Social Security Administration's Death Master File or any other data base or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining that a person has reportedly died;

(3) Death master file match means a search of the death master file that results in a match of the social security number or the name and date of birth of an insured, annuity owner, or retained asset account holder;

(4) Policy means any policy or certificate of life insurance that provides a death benefit or any annuity contract, except that such term does not include:

(a) Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan that is (i) subject to the Employee Retirement Income Security Act of 1974 or (ii) part of a federal employee benefit program;

(b) Any policy or certificate of life insurance that is used to fund a pre-need funeral contract or prearrangement;

(c) Any policy or certificate of credit life or accidental death insurance;

(d) Any policy issued to a group master policyholder for which the insurer does not provide record-keeping services; or

(e) An annuity used to fund an employment-based retirement plan or program if (i) the insurer does not perform the record-keeping services or (ii) the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants;

(5) Record-keeping services means services provided by an insurer for a group policy customer pursuant to an agreement under which the insurer is responsible for obtaining, maintaining, and administering, in its own or its

agent's systems, at least the following information about each individual insured under the group policy or a line of coverage thereunder:

- (a) Social security number or name and date of birth;
- (b) Beneficiary designation information;
- (c) Coverage eligibility;
- (d) Benefit amount; and
- (e) Premium payment status; and

(6) Retained asset account means any mechanism whereby the settlement of proceeds payable under a policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity benefits other than death benefits.

**Source:** Laws 2017, LB137, § 2.

**44-3003 Comparison against death master file; match; insurer; duties; group life insurance; insurer duties.**

(1) An insurer shall perform a comparison of its insureds' in-force policies and retained asset accounts against a death master file to identify potential matches of its insureds. The comparison shall be done on at least a semiannual basis by using the full death master file for the initial comparison and thereafter using the death master file update files for subsequent comparisons. For any potential match identified as a death master file match, the insurer shall, within ninety days after the death master file match:

(a) Complete a good faith effort, which shall be documented by the insurer, to confirm the death of the insured or retained asset account holder using other available records and information; and

(b) Determine whether benefits are due in accordance with the applicable policy or retained asset account. If benefits are due under the policy or retained asset account, the insurer shall:

(i) Complete a good faith effort, which shall be documented by the insurer, to locate the beneficiary; and

(ii) Provide the appropriate claim forms or instructions to the beneficiary to make a claim, including the need to provide an official death certificate if applicable under the policy.

(2) With respect to group life insurance, an insurer is required to confirm the possible death of an insured under subdivision (1)(a) of this section if the insurer maintains at least the following information on those covered under the policy:

- (a) Social security number or name and date of birth;
- (b) Beneficiary designation information;
- (c) Coverage eligibility;
- (d) Benefit amount; and
- (e) Premium payment status.

(3) Every insurer shall implement procedures to account for:

(a) Common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(b) Compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names;

(c) Transposition of the month and date portions of a date of birth; and

(d) Incomplete social security numbers.

(4) Nothing in this section shall be construed to limit the ability of an insurer to request a valid death certificate as part of any claims validation process.

(5) To the extent permitted by law, an insurer may disclose minimum necessary personal information about an insured, a beneficiary, or the owner of a policy or retained asset account to a person who the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of the claim proceeds.

(6) An insurer or its service provider shall not charge any beneficiary or other authorized representative any fees or costs associated with a death master file search or verification of a death master file match conducted pursuant to this section.

**Source:** Laws 2017, LB137, § 3.

#### **44-3004 Benefits; accrued contractual interest; how treated.**

(1) If an insurer determines under section 44-3003 that benefits are due to a beneficiary, the benefits from the applicable policy or retained asset account, plus any applicable accrued contractual interest, shall be payable to the designated beneficiary. If such beneficiary cannot be found, the insurer shall comply with section 69-1303 with respect to such benefits and accrued contractual interest. Interest otherwise payable under section 44-3,143 shall not be considered unclaimed funds under section 69-1303.

(2) Once the benefits and accrued contractual interest are presumed abandoned under section 69-1303, the insurer shall notify the State Treasurer, as part of the report sent under section 69-1310, that:

(a) A beneficiary has not submitted a claim with the insurer; and

(b) The insurer has complied with section 44-3003 and has been unable, after good faith efforts documented by the insurer, to contact the beneficiary.

**Source:** Laws 2017, LB137, § 4.

#### **44-3005 Director of Insurance; powers.**

The Director of Insurance may, at his or her discretion, make an order:

(1) Limiting an insurer's death master file comparisons required under section 44-3003 to the insurer's electronic searchable files or approving a plan and timeline for conversion of the insurer's files to electronic files;

(2) Exempting an insurer from death master file comparisons required under section 44-3003 or permitting an insurer to perform such comparisons on only certain policies or retained asset accounts or to perform such comparisons less frequently than semiannually upon a demonstration of hardship by the insurer;  
or

(3) Phasing in compliance with the Unclaimed Life Insurance Benefits Act according to a plan adopted and published by the director.

**Source:** Laws 2017, LB137, § 5.

**44-3006 Unfair trade practice.**

Failure to meet any requirement of the Unclaimed Life Insurance Benefits Act shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

**Source:** Laws 2017, LB137, § 6.

**Cross References**

Unfair Insurance Trade Practices Act, see section 44-1521.

**ARTICLE 31**

**NEBRASKA PROFESSIONAL ASSOCIATION  
MUTUAL INSURANCE COMPANY ACT**

Section

44-3112. Act; other provisions applicable.

**44-3112 Act; other provisions applicable.**

To the extent applicable and when not in conflict with the Nebraska Professional Association Mutual Insurance Company Act, the provisions of the Nebraska Model Business Corporation Act and Chapters 44 and 77 relating to corporations and insurance shall apply to companies incorporated pursuant to the Nebraska Professional Association Mutual Insurance Company Act.

**Source:** Laws 1978, LB 656, § 12; Laws 1989, LB 92, § 219; Laws 1995, LB 109, § 223; Laws 2014, LB749, § 289.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

**ARTICLE 32**

**HEALTH MAINTENANCE ORGANIZATIONS**

Section

44-32,115. Establishment of health maintenance organization; certificate of authority required.

44-32,177. Health maintenance organization; acquisition, merger, and consolidation; procedure.

**44-32,115 Establishment of health maintenance organization; certificate of authority required.**

Any person may apply to the director for a certificate of authority to establish and operate a health maintenance organization in compliance with the Health Maintenance Organization Act. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under the act. Operating a health maintenance organization without a certificate of authority shall be a violation of the Unauthorized Insurers Act. A foreign corporation may qualify under the Health Maintenance Organization Act if it registers to do business in this state as a foreign corporation under the

Nebraska Model Business Corporation Act and complies with the Health Maintenance Organization Act and other applicable state laws.

**Source:** Laws 1990, LB 1136, § 24; Laws 1993, LB 583, § 88; Laws 1995, LB 109, § 224; Laws 2014, LB749, § 290.

**Cross References**

Nebraska Model Business Corporation Act, see section 21-201.

Unauthorized Insurers Act, see section 44-2008.

**44-32,177 Health maintenance organization; acquisition, merger, and consolidation; procedure.**

No person shall (1) make a tender for or a request or invitation for tenders of, (2) enter into an agreement to exchange securities for, or (3) acquire in the open market or otherwise any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization, and no person shall enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization unless, at the time any offer, request, or invitation is made or any agreement is entered into or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the director and has sent to the health maintenance organization information required by subsection (4) of section 44-2126 and the offer, request, invitation, agreement, or acquisition has been approved by the director. Approval by the director shall be governed by the Insurance Holding Company System Act.

**Source:** Laws 1990, LB 1136, § 86; Laws 1991, LB 236, § 34; Laws 2012, LB887, § 20.

**Cross References**

Insurance Holding Company System Act, see section 44-2120.

## ARTICLE 33

### LEGAL SERVICE INSURANCE CORPORATIONS

Section

44-3312. Legal service insurance corporation; articles of incorporation; contents.

**44-3312 Legal service insurance corporation; articles of incorporation; contents.**

(1) Two or more persons may organize a legal service insurance corporation under this section.

(2) The articles of incorporation of a not-for-profit corporation shall conform to the requirements applicable to not-for-profit corporations under the Nebraska Nonprofit Corporation Act and the articles of incorporation of a corporation for profit shall conform to the requirements applicable to corporations for profit under the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that legal services or indemnity for legal services is to be provided;

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto;

(c) The articles shall state whether members or other providers of services may be required to share operating deficits, either through assessments or through reductions in the compensation for services rendered. They shall also state the general conditions and procedures for deficit sharing and any limits on the amount of the deficit to be assumed by each individual member or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

**Source:** Laws 1979, LB 52, § 12; Laws 1995, LB 109, § 225; Laws 1996, LB 681, § 195; Laws 2014, LB749, § 291.

#### Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

## ARTICLE 35 SERVICE CONTRACTS

### (b) MOTOR VEHICLES

#### Section

44-3521. Terms, defined.

44-3524. Cease and desist order; notice; hearing; injunction.

44-3526. Act; exemptions.

### (b) MOTOR VEHICLES

#### **44-3521 Terms, defined.**

For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Incidental costs means expenses specified in a motor vehicle service contract that are incurred by the service contract holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs include, but are not limited to, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the motor vehicle service contract or sales agreement or by use of a formula itemizing specific incidental costs incurred by the service contract holder;

(3) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(4) Motor vehicle means any motor vehicle as defined in section 60-339;

(5)(a) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance.

(b) Motor vehicle service contract also includes a contract or agreement that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle to perform any one or more of the following:

(i) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(ii) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) The repair of chips or cracks in or replacement of motor vehicle windshields as a result of damage caused by road hazards;

(iv) The replacement of a motor vehicle key or keyfob in the event the key or keyfob becomes inoperable or is lost;

(v) The payment of specified incidental costs as the result of a failure of a vehicle protection product to perform as specified; and

(vi) Other products and services approved by the director;

(6) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(7) Motor vehicle service contract reimbursement insurance policy means a policy of insurance meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider;

(8) Road hazards means hazards that are encountered during normal driving conditions, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps;

(9) Service contract holder means a person who purchases a motor vehicle service contract; and

(10)(a) Vehicle protection product means a vehicle protection device, system, or service that:

(i) Is installed on or applied to a vehicle;

(ii) Is designed to prevent loss or damage to a vehicle from a specific cause; and

(iii) Includes a written warranty.

(b) Vehicle protection product includes, but is not limited to, chemical additives, alarm systems, body part marking products, steering locks, window

etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

**Source:** Laws 1990, LB 1136, § 93; Laws 2005, LB 274, § 230; Laws 2006, LB 875, § 4; Laws 2012, LB1054, § 1.

#### **44-3524 Cease and desist order; notice; hearing; injunction.**

(1) The director may issue an order instructing a motor vehicle service contract provider to cease and desist from selling or offering for sale motor vehicle service contracts if the director determines that the provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act. At the same time the order is issued, the director shall serve notice to the motor vehicle service provider of the reasons for such order and that the motor vehicle service provider may request a hearing in writing within ten business days after receipt of the order. If a hearing is requested, the director shall schedule a hearing within ten business days after receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure Act. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until modified or vacated by the director.

(2) Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the director, the director may give notice in writing of the failure to the Attorney General who may commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the act. The district court may issue the injunction.

**Source:** Laws 1990, LB 1136, § 96; Laws 2014, LB700, § 15.

#### **Cross References**

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

#### **44-3526 Act; exemptions.**

The Motor Vehicle Service Contract Reimbursement Insurance Act shall not apply to:

(1) Motor vehicle service contracts (a)(i) issued by a motor vehicle manufacturer or importer for the motor vehicles manufactured or imported by that manufacturer or importer and (ii) sold by a franchised motor vehicle dealer licensed pursuant to the Motor Vehicle Industry Regulation Act or (b) issued and sold directly by a motor vehicle manufacturer or importer licensed pursuant to the Motor Vehicle Industry Regulation Act for the motor vehicles manufactured or imported by that manufacturer or importer; or

(2) Product warranties governed by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., or to any other warranties, indemnity agreement, or guarantees that are not provided incidental to the purchase of a vehicle protection product.

**Source:** Laws 1990, LB 1136, § 98; Laws 2010, LB816, § 3; Laws 2012, LB1054, § 2.

#### **Cross References**

**Motor Vehicle Industry Regulation Act**, see section 60-1401.



## ARTICLE 37

## MOTOR CLUB SERVICES ACT

Section  
44-3719. Director; duties; rules and regulations.

**44-3719 Director; duties; rules and regulations.**

The director shall administer and enforce the provisions of sections 44-3701 to 44-3721 and may adopt and promulgate rules and regulations in accordance with sections 44-3701 to 44-3721.

**Source:** Laws 1981, LB 113, § 19; Laws 2014, LB700, § 16.

## ARTICLE 38

## DENTAL SERVICES

Section  
44-3812. Corporation; articles of incorporation; requirements.

**44-3812 Corporation; articles of incorporation; requirements.**

(1) Two or more persons may organize a prepaid dental service corporation under this section.

(2) The articles of incorporation of the corporation shall conform to the requirements of the Nebraska Nonprofit Corporation Act or to the requirements of the Nebraska Model Business Corporation Act, except that:

(a) The name of the corporation shall indicate that dental services are to be provided;

(b) The purposes of the corporation shall be limited to providing dental services and business reasonably related thereto;

(c) The articles shall state whether members, shareholders, or providers of services may be required to share operating deficits, either through assessments or through reductions in compensation for services rendered, the general conditions and procedures for deficit sharing, and any limits on the amount of the deficit to be assumed by each individual member, shareholder, or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be selected.

**Source:** Laws 1982, LB 139, § 12; Laws 1995, LB 109, § 226; Laws 1996, LB 681, § 196; Laws 2014, LB749, § 292.

## Cross References

Nebraska Model Business Corporation Act, see section 21-201.

Nebraska Nonprofit Corporation Act, see section 21-1901.

**ARTICLE 39**  
**EDUCATION**

## (a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

## Section

- 44-3902. Terms, defined.  
 44-3903. Continuing education requirements; exceptions.  
 44-3904. Licensee; requirements; furnish evidence of continuing education.  
 44-3905. Continuing education activities; director; duties; continuing education sponsor; requirements; fee; administrative penalty.  
 44-3908. Rules and regulations.

## (b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

- 44-3909. Repealed. Laws 2018, LB743, § 37.  
 44-3910. Repealed. Laws 2018, LB743, § 37.  
 44-3911. Repealed. Laws 2018, LB743, § 37.  
 44-3912. Repealed. Laws 2018, LB743, § 37.  
 44-3913. Repealed. Laws 2018, LB743, § 37.

## (a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

**44-3902 Terms, defined.**

For purposes of sections 44-3901 to 44-3908, unless the context otherwise requires:

(1) Active participation means either (a) attendance at formal meetings of a professional insurance association where a formal business program is presented, (b) service on the board of directors or a formal committee of a professional insurance association and involvement in the activities of such board or committee, or (c) participation in industry, regulatory, or legislative meetings held by or on behalf of a professional insurance association;

(2) Department means the Department of Insurance;

(3) Director means the Director of Insurance;

(4) Licensee means a natural person who is licensed by the department as a resident insurance producer or consultant;

(5) Professional insurance association means a state or national membership organization that offers courses, lectures, seminars, or other instructional programs certified by the director as approved continuing education activities pursuant to section 44-3905, is organized as an association or corporation for the express purpose of promoting the interests of insurance licensees in this state or nationally, and is based on paid membership renewable annually or biennially for a membership fee; and

(6) Two-year period means the period commencing on the date of licensing and ending on the date of expiration of the licensee's first license effective for not less than two years and each succeeding twenty-four-month period.

**Source:** Laws 1982, LB 274, § 2; Laws 1989, LB 92, § 242; Laws 1999, LB 260, § 4; Laws 2008, LB855, § 22; Laws 2018, LB486, § 1. Effective date July 19, 2018.

**44-3903 Continuing education requirements; exceptions.**

Sections 44-3901 to 44-3908 shall not apply to the following persons:

(1) Licensees for whom an examination is not required under the laws of this state;

(2) Licensees who sell or consult only in the areas of credit life insurance and credit accident and health insurance;

(3) Licensees who sell or consult only in the area of travel insurance;

(4) Licensees who sell or consult only in the area of self-service storage facility insurance pursuant to section 44-4069; and

(5) Licensees holding such limited or restricted licenses as the director may exempt.

**Source:** Laws 1982, LB 274, § 3; Laws 1985, LB 48, § 1; Laws 1989, LB 92, § 243; Laws 1990, LB 984, § 1; Laws 2001, LB 51, § 34; Laws 2015, LB458, § 1; Laws 2018, LB1012, § 1.  
Operative date October 1, 2018.

**44-3904 Licensee; requirements; furnish evidence of continuing education.**

(1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete six hours of approved continuing education activities for each line of insurance, including each miscellaneous line, in which he or she is licensed in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2010.

(ii) Licensees qualified to solicit only crop insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit only limited line pre-need funeral insurance shall be required to complete (A) three hours of approved continuing education activities in each two-year period if such licensee holds a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act or (B) six hours of approved continuing education activities in each two-year period if such licensee does not hold a license as a funeral director and embalmer under the Funeral Directing and Embalming Practice Act.

(iv) Licensees qualified to solicit any lines of insurance other than those described in subdivisions (i), (ii), and (iii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. Licensees qualified to solicit variable life and variable annuity products shall not be required to complete additional continuing education activities because the licensee is qualified to solicit variable life and variable annuity products.

(b) Licensees who are not insurance producers shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident insurance producer, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(d) A licensee shall not repeat a continuing education activity for credit within a two-year period.

(2) In each two-year period, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3)(a) Active participation may be approved for up to six hours of continuing education credit to be applied to the twenty-one-hour requirement in subdivision (1)(a)(i) of this section or to the twenty-one-hour requirement in subdivision (1)(b) of this section for life, accident and health or sickness, property, casualty, and personal lines property and casualty insurance for each two-year period for a licensee who is a member of a professional insurance association. A licensee may not use continuing education credit granted for active participation to satisfy other continuing education requirements or the requirement in subsection (2) of this section for three hours of approved continuing education activities on insurance industry ethics. Regardless of the number of associations in which a licensee has demonstrated active participation, a licensee shall not be granted more than six credit hours of continuing education credit for active participation for each two-year period.

(b) Each professional insurance association shall verify active participation separately for each licensee in the form and manner prescribed by the director. Upon receipt of such verification and payment, the director shall grant continuing education hours.

(4) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period.

**Source:** Laws 1982, LB 274, § 4; Laws 1985, LB 48, § 2; Laws 1988, LB 1114, § 1; Laws 1989, LB 92, § 244; Laws 1989, LB 279, § 4; Laws 1993, LB 583, § 91; Laws 1994, LB 978, § 29; Laws 1999, LB 260, § 5; Laws 2008, LB855, § 23; Laws 2015, LB198, § 1; Laws 2018, LB486, § 2.

Effective date July 19, 2018.

#### Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

### **44-3905 Continuing education activities; director; duties; continuing education sponsor; requirements; fee; administrative penalty.**

(1)(a) The director shall certify as approved continuing education activities those courses, lectures, seminars, or other instructional programs which he or she determines would be beneficial in improving the product knowledge or service capability of licensees, except that the director shall refuse to certify as approved any continuing education activity if the sponsors associated with such

continuing education activity are not on the list of approved continuing education sponsors maintained pursuant to subdivision (c) of this subsection. The director may require descriptive information about any continuing education activity and refuse approval of any continuing education activity that does not advance the purposes of sections 44-3901 to 44-3908. The director may require a nonrefundable fee as established by the director not to exceed fifty dollars for review of any continuing education activity submitted for approval or renewal.

(b) Beginning January 1, 2019, any certification by the director of an approved continuing education activity shall be for a four-year period. Any continuing education activity approved prior to January 1, 2019, shall expire on January 1, 2020, or four years after the date of approval, whichever is later. Prior to the expiration of any such certification, the approved continuing education sponsor may seek a renewal of such certification from the director, and the director may recertify such continuing education activity as approved if the director determines the courses, lectures, seminars, or other instructional programs continue to benefit the product knowledge or service capabilities of licensees.

(c) The director shall maintain a list of persons or entities that the director has approved as continuing education sponsors. Such persons or entities shall meet the qualifications for continuing education sponsors established by the director. The director may require such information about any continuing education sponsor as is necessary to determine whether the continuing education sponsor has met such qualifications. The director shall require a nonrefundable fee as established by the director not to exceed two hundred dollars for approval of any continuing education sponsor. The director may impose an administrative penalty not to exceed two hundred dollars per violation, and, in addition, may remove a continuing education sponsor from the approved continuing education sponsor list, after notice and hearing, if the director determines that the continuing education sponsor has:

(i) Failed to maintain compliance with qualifications established by the director pursuant to this subsection;

(ii) Advertised, prior to approval, that a continuing education activity is approved;

(iii) Advertised a continuing education activity in a materially misleading manner;

(iv) Submitted a continuing education activity outline with material inaccuracies in topic content;

(v) Presented nonapproved material during the time of an approved continuing education activity;

(vi) Failed to notify continuing education activity registrants of removal or expiration of a continuing education activity approval;

(vii) Changed the program teaching method or program content in a material manner without notice to the director;

(viii) Failed to present a continuing education activity for the total amount of time specified in the certification request forms submitted to the department for a continuing education activity;

(ix) Advertised, after expiration of the certification, that a continuing education activity is approved;

(x) Failed to inform the director of an individual's successful completion of an approved continuing education activity in a manner and timeframe prescribed by the director;

(xi) Committed other acts which reasonably indicated that the continuing education sponsor is incompetent or fails to use reasonable care;

(xii) Failed to maintain records of successful completion;

(xiii) Failed to report disciplinary action taken by another state licensing authority;

(xiv) Committed improprieties in connection with the classification, application for certification, maintenance of records, teaching method, or program content for a continuing education activity; or

(xv) Failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director shall certify the number of hours to be awarded for participation in an approved continuing education activity based upon contact or classroom hours.

(3) The director shall certify the number of hours to be awarded for successful completion of a correspondence course or program of independent study based upon the number of hours which would be awarded in an equivalent classroom course or program.

(4) The director shall approve the types of associations that meet the requirements of professional insurance associations upon application of an association and may establish reasonable requirements for active participation. The director may require an approved association to provide additional information to the director so that the director may determine whether or not the association continues to meet the requirements of a professional insurance association.

**Source:** Laws 1982, LB 274, § 5; Laws 1989, LB 92, § 245; Laws 1993, LB 583, § 92; Laws 1999, LB 260, § 6; Laws 2018, LB486, § 3; Laws 2018, LB743, § 22.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB486, section 3, with LB743, section 22, to reflect all amendments.

#### **44-3908 Rules and regulations.**

The director may adopt and promulgate rules and regulations for the effective administration of sections 44-3901 to 44-3908 pursuant to the Administrative Procedure Act.

**Source:** Laws 1982, LB 274, § 8; Laws 2018, LB743, § 23.  
Effective date July 19, 2018.

#### **Cross References**

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

#### **(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS**

**44-3909 Repealed. Laws 2018, LB743, § 37.**

**44-3910 Repealed. Laws 2018, LB743, § 37.**

**44-3911 Repealed. Laws 2018, LB743, § 37.**

**44-3912 Repealed. Laws 2018, LB743, § 37.**

**44-3913 Repealed. Laws 2018, LB743, § 37.**

## ARTICLE 40

### INSURANCE PRODUCERS LICENSING ACT

#### Section

- 44-4047. Act, how cited.
- 44-4049. Terms, defined.
- 44-4052. Licensure examination; requirements.
- 44-4053. Licensure application; approval requirements; program of instruction.
- 44-4054. License; lines of authority; renewal; procedure; licensee; duties; director; powers.
- 44-4055. Nonresident license; requirements.
- 44-4056. Examination; exemptions.
- 44-4059. Disciplinary actions; administrative fine; procedure.
- 44-4068. Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.
- 44-4069. Operator of self-service storage facility; limited license; applicant; application fee; renewal fee; director; powers; order; appeal; disclosures; training program; records; prohibited acts.

#### **44-4047 Act, how cited.**

Sections 44-4047 to 44-4069 shall be known and may be cited as the Insurance Producers Licensing Act.

**Source:** Laws 1984, LB 801, § 1; Laws 1991, LB 419, § 2; Laws 1993, LB 583, § 93; Laws 1999, LB 424, § 2; R.S.Supp.,2000, § 44-4001; Laws 2001, LB 51, § 1; Laws 2015, LB458, § 3; Laws 2018, LB1012, § 2.

Operative date October 1, 2018.

#### **44-4049 Terms, defined.**

For purposes of the Insurance Producers Licensing Act:

(1) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(2) Director means the Director of Insurance;

(3) Home state means the state in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(4) Insurance has the same meaning as in section 44-102;

(5) Insurance producer or producer has the same meaning as in section 44-103;

(6) Insurer has the same meaning as in section 44-103;

(7) License means a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer;

(8) Limited line credit insurance includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection in-

urance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;

(9) Limited line credit insurance producer means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

(10) Limited line pre-need funeral insurance means life insurance or a fixed annuity contract purchased by or on behalf of the insured solely to pay the costs of funeral services or funeral service merchandise to be purchased from a funeral home establishment or cemetery;

(11) Limited line pre-need funeral insurance producer means a person who sells, solicits, or negotiates limited line pre-need funeral insurance coverage to individuals;

(12) Limited lines insurance means any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subsection (1) of section 44-4054 or any line of insurance that the director may deem it necessary to recognize for the purposes of complying with subsection (5) of section 44-4055;

(13) Limited lines producer means a person authorized by the director to sell, solicit, or negotiate limited lines insurance;

(14) Negotiate means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(15) Person means any individual or business entity;

(16) Sell means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(17) Solicit means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

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

(19) Terminate means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance;

(20) Uniform application means the uniform application as prescribed by the director which conforms substantially to the uniform application for resident and nonresident producer licensing adopted by the National Association of Insurance Commissioners; and

(21) Uniform business entity application means the uniform business entity application as prescribed by the director which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the National Association of Insurance Commissioners.

**Source:** Laws 2001, LB 51, § 3; Laws 2015, LB198, § 3.

**44-4052 Licensure examination; requirements.**



(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 44-4056, 44-4068, or 44-4069. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the non-refundable fee set forth in section 44-4064.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 44-4064.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Source:** Laws 2001, LB 51, § 6; Laws 2015, LB458, § 4; Laws 2018, LB1012, § 3.

Operative date October 1, 2018.

**44-4053 Licensure application; approval requirements; program of instruction.**

(1) A person applying for a resident insurance producer license shall make application to the director on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

(a) Is at least eighteen years of age. Notwithstanding the provisions of section 43-2101, if any person is issued a license pursuant to the Insurance Producers Licensing Act, his or her minority ends;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 44-4059;

(c) Has paid the fees set forth in section 44-4064; and

(d) Has successfully passed the examinations for the lines of authority for which the person has applied.

(2) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the director shall find that:

(a) The business entity has paid the fees set forth in section 44-4064; and

(b) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

(3) The director may require any documents reasonably necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include

selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the director.

**Source:** Laws 2001, LB 51, § 7; Laws 2018, LB743, § 24.  
Effective date July 19, 2018.

**44-4054 License; lines of authority; renewal; procedure; licensee; duties; director; powers.**

(1) Unless denied licensure pursuant to section 44-4059, a person who has met the requirements of sections 44-4052 and 44-4053 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Accident and health or sickness, insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) Variable life and variable annuity products, insurance coverage provided under variable life insurance contracts, and variable annuities;

(f) Limited line credit insurance;

(g) Limited line pre-need funeral insurance;

(h) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(i) Any other line of insurance permitted under Nebraska laws, rules, or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended if the fee set forth in section 44-4064 is paid and education requirements for resident individual producers are met by the due date.

(3) All business entity licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each year, and all producers licenses shall expire on the last day of the month of the producer's birthday in the first year after issuance in which his or her age is divisible by two. Such producer licenses may be renewed within the ninety-day period before their expiration dates. Business entity and producer licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of business entity and producer licenses as established by the director pursuant to such section. All business entity and producer licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates.

(4) The director may establish procedures for renewal of licenses by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

(5) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. Producer licenses reinstated pursuant to this subsection shall be issued only after payment of a reinstatement fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of producer licenses as established by the director pursuant to such section.

(6) The director may grant a licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of those procedures. The director may grant a producer a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(7) The license shall contain the licensee's name, address, and personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(8) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the director, or both.

(9) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

**Source:** Laws 2001, LB 51, § 8; Laws 2015, LB198, § 4.

#### Cross References

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

#### **44-4055 Nonresident license; requirements.**

(1) Unless denied licensure pursuant to section 44-4059, a nonresident person shall receive a nonresident insurance producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by section 44-4064;

(c) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

(2) The director may verify the insurance producer's licensing status through the producer data base maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(3) A nonresident insurance producer who moves from one state to another state or a resident producer who moves from this state to another state shall file

a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required for the filing of the change of address.

(4) Notwithstanding any other provision of the Insurance Producers Licensing Act, a person licensed as a surplus lines insurance producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of the Surplus Lines Insurance Act.

(5) Notwithstanding any other provisions of the Insurance Producers Licensing Act, a person licensed as a limited line credit insurance producer, a limited line pre-need funeral insurance producer, or other type of limited lines producer in his or her home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

**Source:** Laws 2001, LB 51, § 9; Laws 2015, LB198, § 5.

#### Cross References

Surplus Lines Insurance Act, see section 44-5501.

#### **44-4056 Examination; exemptions.**

(1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or that state's producer data base records, maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to section 44-4053. No examination shall be required of that person to obtain any line of authority previously held in the prior state except if the director determines otherwise by rule and regulation.

**Source:** Laws 2001, LB 51, § 10; Laws 2018, LB743, § 25.  
Effective date July 19, 2018.

#### **44-4059 Disciplinary actions; administrative fine; procedure.**

(1) The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony or a Class I, II, or III misdemeanor;

(g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation pursuant to the License Suspension Act;

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; and

(o) Failing to maintain in good standing a resident license in the insurance producer's home state.

(2) If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act.

(3) The license of a business entity may be suspended, revoked, or refused if the director finds, after notice and hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the Insurance Producers Licensing Act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to such act.

(5) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Producers Licensing Act against any person who is under investigation for or charged with a violation of the act even if the person's license or registration has been surrendered or has lapsed by operation of law. No disciplinary proceeding shall be instituted against any licensed person after the expiration of three years from the termination of such license.

**Source:** Laws 2001, LB 51, § 13; Laws 2017, LB231, § 1.

**Cross References**

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

**License Suspension Act**, see section 43-3301.

**44-4068 Travel insurance; limited lines travel insurance producer; license; duties; travel retailer; duties; director; powers.**

(1) For purposes of this section:

(a) Limited lines travel insurance producer means a licensed insurance producer, including a limited lines producer, who is designated by an insurer as the travel insurance supervising entity;

(b) Offer and disseminate means to provide general information about travel insurance, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the state;

(c) Travel insurance means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel. Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or as deployed military personnel; and

(d) Travel retailer means a business entity that makes, arranges, or offers travel services and that offers and disseminates travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

(2)(a) The director may issue a limited lines travel insurance producer license to an individual or business entity that authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer in a form and manner prescribed by the director.

(b) A travel retailer, its employees, and its authorized representatives may offer and disseminate travel insurance as a service to the travel retailer's customers, on behalf of and under the direction of an individual or a business entity that holds a limited lines travel insurance producer license. In doing so, the travel retailer must provide to prospective purchasers of travel insurance:

(i) A description of the material terms or the actual material terms of the insurance coverage;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the travel insurance policy; and

(iv) The identity and contact information of the insurer and limited lines travel insurance producer.

(c) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf on a form prescribed by the director. The limited lines travel insurance producer must maintain and update the register annually and include: The name, address, and contact information of each travel retailer; the name, address, and contact information of an officer or person who directs or controls the travel retailer's operations; and the travel retailer's federal tax identification number. The limited lines travel insurance producer must submit the register to the director upon request. The limited lines travel insurance producer must also certify that the travel retailer registered is not in violation of 18 U.S.C. 1033.

(d) The limited lines travel insurance producer must designate one of its employees who is a licensed individual producer as the person responsible for the limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the state.

(e) The limited lines travel insurance producer shall require each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the director. The training material must include, at minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(3) A limited lines travel insurance producer and those registered under its license are exempt from the examination requirements in section 44-4052 and the continuing education requirements in sections 44-3901 to 44-3908.

(4) Any travel retailer offering or disseminating travel insurance shall make brochures or other written materials available to prospective purchasers that:

(a) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(5) A travel retailer's employee or authorized representative who is not licensed as an insurance producer may not:

(a) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(b) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) Hold himself or herself out as a licensed insurer, licensed producer, or insurance expert.

(6) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and dissemi-

nating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to receive related compensation for the services upon registration by the limited lines travel insurance producer.

(7) Travel insurance may be provided under an individual policy or under a group or master policy.

(8) The limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure that the travel retailer complies with this section.

(9) The director may take disciplinary action against a limited lines travel insurance producer pursuant to section 44-4059.

**Source:** Laws 2015, LB458, § 5; Laws 2018, LB743, § 26.  
Effective date July 19, 2018.

**44-4069 Operator of self-service storage facility; limited license; applicant; application fee; renewal fee; director; powers; order; appeal; disclosures; training program; records; prohibited acts.**

(1) The director may issue to the operator of a self-service storage facility that has complied with this section a limited license to act as an insurance producer with reference to the kinds of insurance specified in this section for any insurer authorized to write such kinds of insurance in this state.

(2) An applicant for a limited license shall file with the director:

(a) A written application for a limited license, signed by an officer of the applicant, containing such information as the director prescribes;

(b) A list of all self-service storage facilities at which the applicant conducts business in this state;

(c) On request of the director, a list of all employees of the applicant who may act on behalf and under the supervision of the applicant pursuant to this section;

(d) A training program which meets the requirements of subsection (9) of this section; and

(e) A certificate executed by the insurer, stating that the insurer will appoint such applicant to act as the insurance producer in reference to the doing of such kind or kinds of insurance specified in this section if the limited license applied for is issued by the director. Such certificate shall be signed by an officer or managing agent of such insurer.

(3) Before a limited license is issued, the applicant shall pay or cause to be paid to the director an application fee established by the director, not to exceed one hundred dollars. Before a limited license is renewed, the limited licensee shall pay or cause to be paid to the director a renewal fee established by the director, not to exceed one hundred dollars per year. The renewal fee shall be due on the anniversary date of the issuance of the limited license.

(4) A limited licensee shall provide to the director an updated list of all self-service storage facilities and of all employees of the limited licensee who may act on behalf and under the supervision of the limited licensee. Such list shall be provided to the director quarterly.



(5)(a) If any provision of this section or if one or more of the grounds provided under section 44-4059 is violated by a limited licensee, the director may, after notice and hearing:

(i) Revoke or suspend a limited license issued under this section;

(ii) Impose such other penalties, including suspending the transaction of insurance at specific self-service storage facilities where violations have occurred, as the director deems to be necessary or convenient to carry out the purposes of this section; and

(iii) Order payment of an administrative fine of not more than one thousand dollars per violation.

(b) An order issued pursuant to this subsection may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) A limited licensee may act as an insurance producer for an authorized insurer only in connection with insurance providing coverage for the loss of, or damage to, tangible personal property that is contained in storage space or in transit during a rental agreement period, which may be offered on a month-to-month or other periodic basis under an individual policy, or as a group, commercial, or master policy to provide insurance for the self-service storage facility's occupants.

(7) No insurance may be issued pursuant to this section unless:

(a) The limited licensee provides brochures or other written materials to the occupant that:

(i) Summarize the material terms of the insurance offered by the limited licensee to occupants, including the identity of the insurer and any third-party administrator or supervising entity authorized to act on behalf of the insurer;

(ii) Describe the process for filing a claim; and

(iii) Contain information on the price, benefits, exclusions, conditions, or other limitations of such insurance as the director may by rule and regulation prescribe;

(b) The limited licensee makes the following disclosures to the occupant:

(i) That the insurance offered by the limited licensee to occupants may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy or by another source of coverage. This disclosure shall be prominently displayed in the brochure or other written materials provided to the occupant in at least twelve-point bold type;

(ii) That, if purchased, the insurance offered by the limited licensee to occupants is primary over any other coverages applicable to the occupant;

(iii) That the purchase by the occupant of any kind of insurance specified in this section from the limited licensee is not required in order for the occupant to lease space at a self-service storage facility;

(iv) That, if purchased, the insurance offered by the limited licensee to occupants is not an automobile liability policy and would not provide compliance with the Motor Vehicle Safety Responsibility Act; and

(v) That a limited licensee's employee who is not licensed as an insurance producer may not evaluate or interpret the technical terms, benefits, or conditions of the kinds of insurance specified in this section and may not evaluate or provide advice concerning an occupant's existing insurance coverage;

(c) Evidence of coverage is issued at the time the insurance is purchased; and

(d) Costs for insurance are separately itemized in the rental agreement or an invoice issued to the occupant.

(8) Any limited license issued under this section shall also authorize any employee of the limited licensee who is trained pursuant to subsection (9) of this section to act individually on behalf and under the supervision of the limited licensee with respect to the kinds of insurance specified in this section.

(9) Each limited licensee shall conduct a training program which shall meet the following minimum standards:

(a) Each trainee shall be instructed about the kinds of insurance specified in this section offered for purchase by occupants;

(b) Each trainee shall be instructed that an occupant may have an insurance policy that already provides the coverage being offered by the limited licensee pursuant to this section and may not need to purchase from the limited licensee the insurance specified in this section; and

(c) The training program shall be submitted and approved by the director and shall contain, at a minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective occupants.

(10) All records pertaining to transactions under any limited license shall be kept available and open to the inspection of the director or his or her representatives at any time with notice and during business hours. Records shall be maintained for three years following the completion of transactions under a limited license.

(11) Notwithstanding any other provision of this section or rule or regulation adopted and promulgated by the director, a limited licensee shall not be required to treat money collected from occupants purchasing insurance as funds received in a fiduciary capacity, except that the charges for coverage shall be itemized and be ancillary to a rental agreement.

(12) No limited licensee subject to this section shall:

(a) Offer or sell any kind of insurance specified in this section except in conjunction with and incidental to a rental agreement;

(b) Advertise, represent, or otherwise hold itself or any of its employees out as authorized insurers or licensed insurance producers;

(c) Pay its employees any additional compensation, fee, or commission dependent on the placement of insurance under the limited license issued pursuant to this section; or

(d) Require the purchase of any kind of insurance specified in this section from the limited licensee as a condition of rental of leased space at a self-service storage facility.

(13) A limited licensee is exempt from the continuing education requirements in sections 44-3901 to 44-3908 and the examination requirements in section 44-4052.

(14) For purposes of this section:

(a) Leased space means the individual storage space at a self-service storage facility which is rented to an occupant pursuant to a rental agreement;

(b) Limited licensee means an operator of a self-service storage facility authorized to sell certain kinds of insurance relating to the use and occupancy of leased space at a self-service storage facility pursuant to this section;

(c) Occupant means a person entitled to the use of leased space at a self-service storage facility under a rental agreement or his or her successors or assigns;

(d) Operator means the owner, operator, lessor, or sublessor of a self-service storage facility or an agent or any other person authorized to manage the facility. Operator does not include a warehouseman if the warehouseman issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(e) Personal property means movable property that is not affixed to land and includes: (i) Goods, wares, merchandise, household items, and furnishings; (ii) vehicles, motor vehicles, trailers, and semitrailers; and (iii) watercraft and motorized watercraft; and

(f) Rental agreement means any written agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of leased space at a self-service storage facility.

**Source:** Laws 2018, LB1012, § 4.  
Operative date October 1, 2018.

**Cross References**

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

**Motor Vehicle Safety Responsibility Act**, see section 60-569.

**ARTICLE 42**

**COMPREHENSIVE HEALTH INSURANCE POOL ACT**

Section

- 44-4217. Board; pool administrator; selection.
- 44-4219. Plan of operation; contents.
- 44-4220.02. Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.
- 44-4223. Selection of pool administrator; procedure.
- 44-4224. Pool administrator; duties.
- 44-4225. Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.

**44-4217 Board; pool administrator; selection.**

The director shall select the board. The board shall select a pool administrator pursuant to section 44-4223.

**Source:** Laws 1985, LB 391, § 17; Laws 1989, LB 279, § 6; Laws 1992, LB 1006, § 31; Laws 2000, LB 1253, § 21; Laws 2011, LB73, § 1.

**44-4219 Plan of operation; contents.**

In its plan of operation, the board shall:

- (1) Establish procedures for the handling and accounting of assets and funds of the pool;
- (2) Select a pool administrator in accordance with section 44-4223;

(3) Establish procedures for the selection, replacement, term of office, and qualifications of the directors of the board and rules of procedures for the operation of the board; and

(4) Develop and implement a program to publicize the existence of the pool, the eligibility requirements, and the procedures for enrollment and to maintain public awareness of the pool.

**Source:** Laws 1985, LB 391, § 19; Laws 1992, LB 1006, § 33; Laws 2000, LB 1253, § 22; Laws 2011, LB73, § 2.

**44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.**

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the pool administrator to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the pool administrator which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the pool administrator and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the pool administrator to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage.

(3) Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

**Source:** Laws 2009, LB358, § 3; Laws 2011, LB73, § 3.

#### **44-4223 Selection of pool administrator; procedure.**

(1) The board shall select a pool administrator through a competitive bidding process to administer the pool. The pool administrator may be an insurer or a third-party administrator authorized to transact business in this state. The board shall evaluate bids submitted on the basis of criteria established by the board which shall include:

(a) The applicant's proven ability to handle individual sickness and accident insurance;

(b) The efficiency of the applicant's claim-paying procedures;

(c) The applicant's estimate of total charges for administering the pool;

(d) The applicant's ability to administer the pool in a cost-effective manner; and

(e) The applicant's ability to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services.

(2) The pool administrator shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service by a pool administrator, the board shall invite all insurers and third-party administrators authorized to transact business in this state, including the current pool administrator, to submit bids to serve as the pool administrator for the succeeding three-year period. Selection of the pool administrator for the succeeding period shall be made at least six months prior to the end of the current three-year period.

**Source:** Laws 1985, LB 391, § 23; Laws 1992, LB 1006, § 37; Laws 2011, LB73, § 4.

#### **44-4224 Pool administrator; duties.**

The pool administrator shall:

(1) Perform all eligibility verification functions relating to the pool;

(2) Establish a premium billing procedure for collection of premiums from covered individuals on a periodic basis as determined by the board;

(3) Perform all necessary functions to assure timely payment of benefits to covered individuals, including:

(a) Making available information relating to the proper manner of submitting a claim for benefits to the pool and distributing forms upon which submission shall be made; and

(b) Evaluating the eligibility of each claim for payment by the pool;

(4) Submit regular reports to the board regarding the operation of the pool. The frequency, content, and form of the reports shall be determined by the board;

(5) Following the close of each calendar year, report such income and expense items as directed by the board to the board and the department on a form prescribed by the director; and

(6) Be paid as provided in the plan of operation for its expenses incurred in the performance of its services to the pool.

**Source:** Laws 1985, LB 391, § 24; Laws 2000, LB 1253, § 26; Laws 2011, LB73, § 5.

**44-4225 Board; report; Comprehensive Health Insurance Pool Distributive Fund; created; use; investment; director; funding powers.**

(1) Following the close of each calendar year, the board shall report the board's determination of the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The board shall distribute copies of the report to the director, the Governor, and each member of the Legislature. The report submitted to each member of the Legislature shall be submitted electronically.

(2) The Comprehensive Health Insurance Pool Distributive Fund is created. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, any premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the operation of and payment of claims made against the pool. 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) The board shall make periodic estimates of the amount needed from the fund for payment of losses resulting from claims, including a reasonable reserve, and administrative, organizational, and interim operating expenses and shall notify the director of the amount needed and the justification of the board for the request.

(4) The director shall approve all withdrawals from the fund and may determine when and in what amount any additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool.

(5) No later than May 1, 2002, and each May 1 thereafter, after funding of the net loss from operation of the pool for the prior premium and related retaliatory tax year, taking into account the policyholder premiums, account investment

income, claims, costs of operation, and other appropriate gains and losses, the director shall transmit any money remaining in the fund as directed by section 77-912, disregarding the provisions of subdivisions (1) through (3) of such section. Interest earned on money in the fund shall be credited proportionately in the same manner as premium and related retaliatory taxes set forth in section 77-912.

**Source:** Laws 1985, LB 391, § 25; Laws 1991, LB 419, § 3; Laws 1992, LB 1006, § 38; Laws 2000, LB 1253, § 27; Laws 2011, LB73, § 6; Laws 2012, LB782, § 54.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**ARTICLE 44**

**RISK RETENTION ACT**

Section

44-4404. Risk retention group; charter and license requirements; governance standards; material service provider contract; term; audit committee; written charter; waiver of requirement; code of business conduct and ethics.

**44-4404 Risk retention group; charter and license requirements; governance standards; material service provider contract; term; audit committee; written charter; waiver of requirement; code of business conduct and ethics.**

(1) A risk retention group seeking to be chartered and licensed in this state shall be chartered and licensed as a liability insurance company under Chapter 44 and, except as provided elsewhere in the Risk Retention Act, shall comply with all of the laws, rules, and regulations applicable to such insurers chartered and licensed in this state and with sections 44-4405 to 44-4413 to the extent such requirements are not a limitation on laws, rules, or regulations of this state.

(2) Before a risk retention group may offer insurance in any state, it shall submit for approval to the director a plan of operation and revisions of such plan if the group intends to offer any additional lines of liability insurance.

(3) At the time of filing its application for a charter and license, the risk retention group shall provide to the director in summary form the following information: The identity of the initial members of the group; the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the director shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners shall be in addition to and shall not be sufficient to satisfy the requirements of section 44-4405 or any other sections of the act.

(4) Subsections (5) through (11) of this section provide governance standards for risk retention groups licensed and chartered in this state. Any risk retention group in existence on January 1, 2017, shall be in compliance with such standards by January 1, 2018. Any risk retention group that is initially licensed

on or after January 1, 2017, shall be in compliance with such standards at the time of licensure.

(5)(a) For purposes of this subsection:

(i) Board of directors or board means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions; and

(ii) Director means a natural person designated in the articles of the risk retention group or designated, elected, or appointed by any other manner, name, or title to act as a director.

(b) The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney in fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors or subscribers advisory committee under this subsection. To the extent permissible under state law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney in fact.

(c) No director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator at least annually. For this purpose, any person that is a direct or indirect owner of or subscriber in the risk retention group, or is an officer, director, or employee of such an owner and insured unless some other position of such officer, director, or employee constitutes a material relationship, as contemplated by section 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act of 1986, is considered to be independent.

(d) Material relationship of a person with the risk retention group includes, but is not limited to:

(i) The receipt in any one twelve-month period of compensation or payment of any other item of value by such person, a member of such person's immediate family, or any business with which such person is affiliated from the risk retention group or a consultant or service provider to the risk retention group is greater than or equal to five percent of the risk retention group's gross written premium for such twelve-month period or two percent of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such a twelve-month period. Such person or immediate family member of such person is not independent until one year after his or her compensation from the risk retention group falls below the threshold;

(ii) A relationship with an auditor as follows: A director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment, or auditing relationship; and

(iii) A relationship with a related entity as follows: A director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of such service or the employment relationship.



(6)(a) The term of any material service provider contract with the risk retention group shall not exceed five years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit, or actuarial contracts at any time for cause after providing adequate notice as defined in the contract. The service provider contract is deemed material if the amount to be paid for such contract is greater than or equal to five percent of the risk retention group's annual gross written premium or two percent of its surplus, whichever is greater.

(b) For purposes of this subsection, service providers shall include captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters, or other parties responsible for underwriting, determination of rates, collection of premiums, adjusting and settling claims, or the preparation of financial statements. Any reference to lawyers in this subdivision does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to such lawyers are material as referenced in subdivision (5)(d) of this section.

(c) No service provider contract meeting the definition of material relationship contained in subdivision (5)(d) of this section shall be entered into unless the risk retention group has notified the director in writing of its intention to enter into such transaction at least thirty days prior thereto and the director has not disapproved it within such period.

(7) The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(a) Assure that all owners or insureds of the risk retention group receive evidence of ownership interest;

(b) Develop a set of governance standards applicable to the risk retention group;

(c) Oversee the evaluation of the risk retention group's management, including, but not limited to, the performance of the captive manager, managing general underwriter, or other party or parties responsible for underwriting, determination of rates, collection of premiums, adjusting or settling claims, or the preparation of financial statements;

(d) Review and approve the amount to be paid for all material service providers; and

(e) Review and approve, at least annually:

(i) The risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) The officers' and service providers' performance in light of those goals and objectives; and

(iii) The continued engagement of the officers and material service providers.

(8)(a) The risk retention group shall have an audit committee composed of at least three independent board members as described in subsection (5) of this section. A nonindependent board member may participate in the activities of the audit committee, if invited by the members, but cannot be a member of such committee.

(b) The audit committee shall have a written charter that defines the committee's purpose, which, at a minimum, must be to:

(i) Assist board oversight of (A) the integrity of the financial statements, (B) the compliance with legal and regulatory requirements, and (C) the qualifications, independence, and performance of the independent auditor and actuary;

(ii) Discuss the annual audited financial statements and quarterly financial statements with management;

(iii) Discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;

(iv) Discuss policies with respect to risk assessment and risk management;

(v) Meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(vi) Review with the independent auditor any audit problems or difficulties and management's response;

(vii) Set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;

(viii) Require the external auditor to rotate the lead or coordinating audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five consecutive fiscal years; and

(ix) Report regularly to the board of directors.

(c) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee as described in subdivision (8)(b) of this section.

(9) The board of directors shall adopt and disclose governance standards, where disclose means making such information available through electronic or other means, including the posting of such information on the risk retention group's web site, and providing such information to members or insureds upon request, which shall include:

(a) A process by which the directors are elected by the owners or insureds;

(b) Director qualification standards;

(c) Director responsibilities;

(d) Director access to management and, as necessary and appropriate, independent advisors;

(e) Director compensation;

(f) Director orientation and continuing education;

(g) The policies and procedures that are followed for management succession; and

(h) The policies and procedures that are followed for annual performance evaluation of the board.

(10) The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers, which should include the following topics:

- (a) Conflicts of interest;
- (b) Matters covered under the corporate opportunities doctrine under the state of domicile;
- (c) Confidentiality;
- (d) Fair dealing;
- (e) Protection and proper use of risk retention group assets;
- (f) Compliance with all applicable laws, rules, and regulations; and
- (g) Requiring the reporting of any illegal or unethical behavior which affects the operation of the risk retention group.

(11) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the domestic regulator in writing if he or she becomes aware of any material noncompliance with any of the governance standards provided in subsections (5) through (11) of this section.

**Source:** Laws 1987, LB 514, § 4; Laws 1991, LB 236, § 47; Laws 2016, LB772, § 15.

## ARTICLE 45

### LONG-TERM CARE INSURANCE ACT

#### Section

44-4521. Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.

#### **44-4521 Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.**

(1) On or after August 1, 2008, an individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for health or sickness and accident insurance and has completed a one-time training course and ongoing training every twenty-four months thereafter. All training shall meet the requirements of subsection (2) of this section.

(2) The one-time training course required by subsection (1) of this section shall be no less than eight hours in length, and the required ongoing training shall be no less than four hours in length. All training required under subsection (1) of this section shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medic-aid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

Training required by subsection (1) of this section shall not include any sales or marketing information, materials, or training other than those required by state or federal law.

(3)(a) Insurers subject to the Long-Term Care Insurance Act shall obtain verification that the insurance producer receives training required by subsection (1) of this section before a producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. Records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(b) Insurers subject to the act shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the Department of Health and Human Services that producers have received the training required by subsection (1) of this section and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(4) The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements of the State of Nebraska.

(5) The training requirements of subsection (1) of this section may be approved as continuing education activities pursuant to sections 44-3901 to 44-3908.

**Source:** Laws 2007, LB117, § 10; Laws 2008, LB855, § 28; Laws 2018, LB743, § 27.  
Effective date July 19, 2018.

## ARTICLE 48

### INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section	
44-4803.	Terms, defined.
44-4805.	Injunctions and orders.
44-4815.	Actions; effect of rehabilitation.
44-4821.	Powers of liquidator.
44-4826.	Fraudulent transfers and obligations incurred prior to petition.
44-4827.	Fraudulent transfer after petition.
44-4828.	Preferences and liens.
44-4830.01.	Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.
44-4862.	Act, how cited.

#### **44-4803 Terms, defined.**

For purposes of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act:

(1) Ancillary state means any state other than a domiciliary state;

(2) Creditor means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed, or contingent;

(3) Delinquency proceeding means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving.

ing such insurer and any summary proceeding under section 44-4809 or 44-4810;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Doing business includes any of the following acts, whether effected by mail or otherwise:

(a) The issuance or delivery of contracts of insurance to persons who are residents of this state;

(b) The solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) The collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) The transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) Operating as an insurer under a license or certificate of authority issued by the department;

(7) Domiciliary state means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

(8) Fair consideration is given for property or an obligation:

(a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, (i) property is conveyed, (ii) services are rendered, (iii) an obligation is incurred, or (iv) an antecedent debt is satisfied; or

(b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained;

(9) Foreign country means any other jurisdiction not in any state;

(10) Foreign guaranty association means a guaranty association now in existence in or hereafter created by the legislature of another state;

(11) Formal delinquency proceeding means any liquidation or rehabilitation proceeding;

(12) General assets means all property, real, personal, or otherwise not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all insureds or all insureds and creditors, in more than a single state, are treated as general assets;

(13) Guaranty association means the Nebraska Property and Liability Insurance Guaranty Association, the Nebraska Life and Health Insurance Guaranty Association, and any other similar entity now or hereafter created by the Legislature for the payment of claims of insolvent insurers;

(14) Insolvency or insolvent means:

(a) For an insurer formed under Chapter 44, article 8:

(i) The inability to pay any obligation within thirty days after it becomes payable; or

(ii) If an assessment is made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss;

(b) For any other insurer, that it is unable to pay its obligations when they are due or when its admitted assets do not exceed its liabilities plus the greater of:

(i) Any capital and surplus required by law to be maintained; or

(ii) The total par or stated value of its authorized and issued capital stock; and

(c) For purposes of this subdivision, liabilities includes, but is not limited to, reserves required by statute or by rules and regulations adopted and promulgated or specific requirements imposed by the director upon a subject company at the time of admission or subsequent thereto;

(15) Insurer means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by the director or the director, commissioner, or equivalent official of another state. Any other persons included under section 44-4802 are deemed to be insurers;

(16) Netting agreement means an agreement and any terms and conditions incorporated by reference therein, including a master agreement that, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement:

(a) That documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts; and

(b) That provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement;

(17) Person includes any individual, corporation, partnership, limited liability company, association, trust, or other entity;

(18) Qualified financial contract means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the director determines by rule and regulation, resolution, or order to be a qualified financial contract for the purposes of the act;

(19) Receiver means receiver, liquidator, rehabilitator, or conservator as the context requires;

(20) Reciprocal state means any state other than this state in which in substance and effect sections 44-4818, 44-4852, 44-4853, and 44-4855 to 44-4857 are in force, in which provisions are in force requiring that the director, commissioner, or equivalent official of such state be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

(21) Secured claim means any claim secured by mortgage, trust deed, pledge, or deposit as security, escrow, or otherwise but does not include a special deposit claim or a claim against general assets. The term includes claims which have become liens upon specific assets by reason of judicial process;

(22) Special deposit claim means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons but does not include any claim secured by general assets;

(23) State means any state, district, or territory of the United States and the Panama Canal Zone; and

(24) Transfer includes the sale of property or an interest therein and every other and different mode, direct or indirect, of disposing of or of parting with property, an interest therein, or the possession thereof or of fixing a lien upon property or an interest therein, absolutely or conditionally, voluntarily, or by or without judicial proceedings. The retention of a security title to property delivered to a debtor is deemed a transfer suffered by the debtor.

**Source:** Laws 1989, LB 319, § 3; Laws 1990, LB 984, § 4; Laws 1991, LB 236, § 60; Laws 1993, LB 121, § 258; Laws 2011, LB72, § 6.

#### Cross References

Nebraska Life and Health Insurance Guaranty Association, see section 44-2705.

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

### 44-4805 Injunctions and orders.

(1) Except as provided in subsection (3) of this section, any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (a) The transaction of further business;
- (b) The transfer of property;
- (c) Interference with the receiver or with a proceeding under the act;
- (d) Waste of the insurer's assets;
- (e) Dissipation and transfer of bank accounts;
- (f) The institution or further prosecution of any actions or proceedings;
- (g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its insureds;
- (h) The levying of execution against the insurer, its assets, or its insureds;
- (i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of insureds, creditors, or shareholders or the administration of any proceeding under the act.

(2) Except as provided in subsection (3) of this section, the receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

(3) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or

guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

**Source:** Laws 1989, LB 319, § 5; Laws 1991, LB 236, § 62; Laws 2013, LB337, § 1.

**44-4815 Actions; effect of rehabilitation.**

(1) Except as provided in subsection (4) of this section, any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of insureds, creditors, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

(4) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

**Source:** Laws 1989, LB 319, § 15; Laws 1991, LB 236, § 70; Laws 2013, LB337, § 2.

**44-4821 Powers of liquidator.**

(1) The liquidator shall have the power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;



(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she may deem necessary to assist in the liquidation;

(c) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in liquidation proceedings conducted under the act;

(d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

(f) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he or she deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(h) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

(i) To conduct public and private sales of the property of the insurer;

(j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 44-4842;

(k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid

as an administrative expense and shall have priority over any other claims under subdivision (1) of section 44-4842;

(m) To enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(n) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 44-4820, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(o) To prosecute any action which may exist on behalf of the insureds, creditors, members, or shareholders of the insurer against any officer of the insurer or any other person;

(p) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

(q) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(r) To invest all sums not currently needed unless the court orders otherwise;

(s) To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;

(t) To assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(u) To exercise and enforce all the rights, remedies, and powers of any insured, creditor, shareholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 44-4826 to 44-4828, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(v) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered;

(w) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liqui-

ation, conservation, or dissolution of an insurer doing business in both states; and

(x) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of the act.

(2)(a) If a company placed in liquidation has issued liability policies on a claims-made basis, which policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated in this subsection. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her nor shall it exclude in any manner his or her right to do such other acts not in this section specifically enumerated or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

**Source:** Laws 1989, LB 319, § 21; Laws 1991, LB 236, § 75; Laws 2013, LB337, § 3.

#### **44-4826 Fraudulent transfers and obligations incurred prior to petition.**

(1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. Except as provided in subsection (5) of this section, a transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the act which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of section 44-4828.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Except as provided in subsection (5) of this section, any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

**Source:** Laws 1989, LB 319, § 26; Laws 1991, LB 236, § 78; Laws 2013, LB337, § 4.

#### **44-4827 Fraudulent transfer after petition.**

(1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize

or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be liable therefor and shall be bound to account to the liquidator.

(4) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

**Source:** Laws 1989, LB 319, § 27; Laws 1991, LB 236, § 79; Laws 2013, LB337, § 5.

#### **44-4828 Preferences and liens.**

(1)(a) A preference shall mean a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act the effect of which transfer may be to enable the creditor to obtain a greater percentage of such debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Except as provided in subdivision (1)(d) of this section, any preference may be avoided by the liquidator if:

(i) The insurer was insolvent at the time of the transfer;

(ii) The transfer was made within four months before the filing of the petition;

(iii) The creditor receiving it or to be benefited thereby or his or her agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) The creditor receiving it was: An officer; any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position; any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer; or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except when a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(d) A liquidator or receiver shall not avoid any preference arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3)(a) A lien obtainable by legal or equitable proceedings upon a simple contract shall be one arising in the ordinary course of such proceedings upon the entry or recording of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It shall not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting shall not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under subdivision (1)(b) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under the act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court of Lancaster County shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or,

when the property is retained under subsection (7) of this section, to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(10) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under the act or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, except that if the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by subdivision (1)(b)(iv) of this section.

(11)(a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It shall be permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

**Source:** Laws 1989, LB 319, § 28; Laws 1995, LB 616, § 2; Laws 2013, LB337, § 6; Laws 2018, LB193, § 83.

Operative date July 19, 2018.

**44-4830.01 Netting agreement; qualified financial contract; net or settlement amount; treatment; receiver; powers; duties; notice; claim of counterparty; rights of counterparty.**

(1) Notwithstanding any other provision of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to the contrary, including any other provision of the act that permits the modification of contracts, or another law of this state, a person shall not be stayed or prohibited from exercising any of the following:

(a) A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of one of the following:

(i) The insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than the act; or



(ii) The commencement of a formal delinquency proceeding under the act;

(b) Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(c) Subject to any provision of subsection (2) of section 44-4830, any right to setoff or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(2) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement or qualified financial contract that may provide that the defaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount, except to the extent it is subject to one or more secondary liens or encumbrances, shall be a general asset of the insurer.

(3) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under the act, the receiver shall do one of the following:

(a) Transfer to one party, other than an insurer subject to a proceeding under the act, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(i) All rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract; or

(b) Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subdivision (a) of this subsection with respect to the counterparty and any affiliate of the counterparty.

(4) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use his or her best efforts to notify any person who is party to the netting agreement or qualified financial contract of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, business day means a day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(5) Notwithstanding any other provision of the act to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract or any

pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under the act. However, a transfer may be avoided under section 44-4828 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or an existing or future creditor.

(6)(a) In exercising any of its powers under the act to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith in its entirety.

(b) Notwithstanding any other provision of the act to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subdivision, actual direct compensatory damages does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(7) For purposes of this section, contractual right includes any right, whether or not evidenced in writing, arising under (a) statutory or common law, (b) a rule or bylaw of a national securities exchange, a national securities clearing organization, or a securities clearing agency, (c) a rule or bylaw or a resolution of the governing body of a contract market or its clearing organization, or (d) law merchant.

(8) This section does not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(9) All rights of a counterparty under the act shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts, if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

**Source:** Laws 2011, LB72, § 7.

#### **44-4862 Act, how cited.**

Sections 44-4801 to 44-4862 shall be known and may be cited as the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

**Source:** Laws 1991, LB 236, § 85; Laws 2004, LB 1047, § 17; Laws 2011, LB72, § 8.

## ARTICLE 52

## SMALL EMPLOYER HEALTH INSURANCE

## Section

- 44-5224. Purposes of act.
- 44-5230. Basic health benefit plan, defined.
- 44-5231. Repealed. Laws 2017, LB644, § 21.
- 44-5246. Repealed. Laws 2017, LB644, § 21.
- 44-5248. Repealed. Laws 2017, LB644, § 21.
- 44-5251. Repealed. Laws 2017, LB644, § 21.
- 44-5255. Standard health benefit plan, defined.
- 44-5258. Premium rates; requirements; limitation on transfers; director; powers; disclosures required; small employer carrier; duties.
- 44-5261. Repealed. Laws 2017, LB644, § 21.
- 44-5263. Repealed. Laws 2017, LB644, § 21.
- 44-5266. Small employer carrier; market health benefit plan coverage; carrier, agent, or broker; prohibited activities; compensation to agent or broker; denial of application; rules and regulations; unfair trade practice; when; third-party administrator.

**44-5224 Purposes of act.**

The purposes of the Small Employer Health Insurance Availability Act are to promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of preexisting condition exclusions, to provide for development of basic and standard health benefit plans to be offered to all small employers, and to improve the overall fairness and efficiency of the small group health insurance market. The act is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

**Source:** Laws 1994, LB 1222, § 2; Laws 2017, LB644, § 6.

**44-5230 Basic health benefit plan, defined.**

Basic health benefit plan shall mean a lower cost health benefit plan regulated by the Department of Insurance.

**Source:** Laws 1994, LB1222, § 8; Laws 2009, LB154, § 9; Laws 2017, LB644, § 7.

**44-5231 Repealed. Laws 2017, LB644, § 21.****44-5246 Repealed. Laws 2017, LB644, § 21.****44-5248 Repealed. Laws 2017, LB644, § 21.****44-5251 Repealed. Laws 2017, LB644, § 21.****44-5255 Standard health benefit plan, defined.**

Standard health benefit plan shall mean a health benefit plan regulated by the Department of Insurance.

**Source:** Laws 1994, LB 1222, § 33; Laws 2009, LB154, § 10; Laws 2017, LB644, § 8.

**44-5258 Premium rates; requirements; limitation on transfers; director; powers; disclosures required; small employer carrier; duties.**

(1) Premium rates for health benefit plans subject to the Small Employer Health Insurance Availability Act shall be subject to the following provisions:

(a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent;

(b) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to such employers under the rating system for that class of business shall not vary from the index rate by more than twenty-five percent of the index rate;

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate if such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) Any adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; and

(iii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business;

(d) Adjustments in rates for claim experience, health status, and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer;

(e) Premium rates for health benefit plans shall comply with the requirements of this section;

(f) A small employer carrier may utilize industry as a case characteristic in establishing premium rates, provided that the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent;

(g) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1995, a premium rate for a rating period may exceed the ranges set forth in subdivisions (a) and (b) of this subsection for a period of three years following January 1, 1995. In such case, the percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(i) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period.

In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate if such change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business;

(h)(i) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

(ii) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period;

(i) For the purposes of this subsection, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision if the restriction of benefits to network providers results in substantial differences in claim costs;

(j) The small employer carrier shall not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size without the prior approval of the director; and

(k) The director may establish regulations to implement the provisions of this section and to assure that rating practices used by small employer carriers are consistent with the purposes of the act, including regulations that:

(i) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans; and

(ii) Prescribe the manner in which case characteristics may be used by small employer carriers.

(2) A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration of coverage since issue.

(3) The director may suspend for a specified period the application of subdivision (1)(a) of this section as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the director either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of all of the following:

(a) The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;

(b) The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claim experience, that affect changes in premium rates;

(c) The provisions relating to the renewability of policies and contracts; and

(d) The provisions relating to any preexisting condition provision.

(5)(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the director annually on or before March 15, an actuarial certification certifying that the carrier is in compliance with the act and that the rating methods of the small employer carrier are actuarially sound. Such certification shall be in a form and manner, and shall contain such information, as specified by the director. A copy of the certification shall be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subdivision (a) of this subsection available to the director upon request. Except in cases of violations of the act, the information shall be considered proprietary and trade secret information and shall not be subject to disclosure by the director to persons outside of the Department of Insurance except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

**Source:** Laws 1994, LB 1222, § 36; Laws 2017, LB644, § 9.

**44-5261 Repealed. Laws 2017, LB644, § 21.**

**44-5263 Repealed. Laws 2017, LB644, § 21.**

**44-5266 Small employer carrier; market health benefit plan coverage; carrier, agent, or broker; prohibited activities; compensation to agent or broker; denial of application; rules and regulations; unfair trade practice; when; third-party administrator.**

(1) Each small employer carrier shall actively market health benefit plan coverage, including the basic health benefit plans and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.

(2)(a) Except as provided in subdivision (b) of this subsection, no small employer carrier, agent, or broker shall, directly or indirectly, engage in the following activities:

(i) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer; or

(ii) Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subdivision (a) of this subsection shall not apply with respect to information provided by a small employer carrier, an agent, or a broker to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3)(a) Except as provided in subdivision (b) of this subsection, no small employer carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent or broker that provides for or results in the compensation paid to an agent or broker for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subdivision (a) of this subsection shall not apply with respect to a compensation arrangement that provides compensation to an agent or broker on the basis of percentage of premium except that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation to an agent or broker, if any, for the sale of a basic health benefit plan or a standard health benefit plan.

(5) No small employer carrier, agent, or broker may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(6) Denial by a small employer carrier of an application for coverage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(7) The director may establish rules and regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(8)(a) A violation of this section by a small employer carrier, an agent, or a broker shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this section as if it were a small employer carrier.

**Source:** Laws 1994, LB 1222, § 44; Laws 2017, LB644, § 10.

Unfair Insurance Trade Practices Act, see section 44-1521.

## ARTICLE 55

### SURPLUS LINES INSURANCE

#### Section

- 44-5502. Terms, defined.
- 44-5503. Surplus lines license; issuance.
- 44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.
- 44-5505. Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.
- 44-5506. Surplus lines licensee; quarterly statement; tax payment.
- 44-5508. Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.
- 44-5510. Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.
- 44-5511. Surplus lines licensee; report; contents; when due.
- 44-5512. Violations; director; hearing; orders; penalty; appeal.
- 44-5515. Exempt commercial purchaser; taxes; form.

#### **44-5502 Terms, defined.**

For purposes of the Surplus Lines Insurance Act:

(1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(2) Control means:

(a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or

(b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(3) Department means the Department of Insurance;

(4) Director means the Director of Insurance;

(5)(a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;



(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) Beginning on the fifth occurrence of January 1 after July 21, 2011, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(6) Foreign, alien, admitted, and nonadmitted, when referring to insurers, have the same meanings as in section 44-103 but do not include a risk retention group as defined in 15 U.S.C. 3901(a)(4);

(7)(a) Except as provided in subdivision (7)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (7)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (7)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(8) Insurer has the same meaning as in section 44-103;

(9) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(10) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

**Source:** Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22; Laws 2011, LB70, § 1; Laws 2017, LB113, § 44.

#### **44-5503 Surplus lines license; issuance.**

The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to

transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number. The director may utilize the national insurance producer data base of the National Association of Insurance Commissioners, or any other equivalent uniform national data base, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

**Source:** Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-139; Laws 1955, c. 168, § 3, p. 479; Laws 1978, LB 836, § 1; Laws 1989, LB 92, § 29; R.S.Supp.,1990, § 44-139; Laws 1992, LB 1006, § 3; Laws 1997, LB 752, § 113; Laws 2001, LB 51, § 38; Laws 2002, LB 1139, § 36; Laws 2011, LB70, § 2.

**44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.**

(1) No person, other than an exempt commercial purchaser, shall place, procure, or effect insurance for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

**Source:** Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23; Laws 2011, LB70, § 3.

**44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.**

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name of the insured, (10) the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

**Source:** Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20; Laws 2011, LB70, § 4.

**44-5506 Surplus lines licensee; quarterly statement; tax payment.**

(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall, on or before March 1 for the quarter ending the preceding December 31, June 1 for the quarter ending the preceding March 31, September 1 for the quarter ending the preceding June 30, and December 1 for the quarter ending the preceding September 30 of each year, make and file with the department a verified statement upon a form prescribed by the department or a designee of the director which shall exhibit the true amount of all such business transacted during that period.

(2)(a) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall collect and pay to the director or the director's designee, at the time the statement required under subsection (1) of this section is filed, a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license on behalf of an insured whose home state is the State of Nebraska. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

(b) The sum payable shall be computed based on an amount equal to three percent of the premiums for insurance that covers properties, risks, or exposures located or to be performed in the United States, to be remitted to the State Treasurer in accordance with section 77-912.

(c) The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

**Source:** Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-142; Laws 1978, LB 836, § 4; Laws 1987, LB 302, § 4; Laws 1989, LB 92, § 32; R.S.Supp.,1990, § 44-142; Laws 1992, LB 1006, § 6; Laws 2011, LB70, § 5; Laws 2016, LB837, § 1.

**44-5508 Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.**

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(a) Is authorized to write such insurance in its domiciliary jurisdiction;

(b) Has established satisfactory evidence of good repute and financial integrity; and

(c)(i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or

(ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(4)(a) No nonadmitted foreign or alien insurer shall transact business under the Surplus Lines Insurance Act if it does not comply with the surplus and capital requirements of subsection (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subsection (2) of this section.

**Source:** Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21; Laws 2011, LB70, § 6.

**44-5510 Insurance; procurement from nonadmitted insurer; when; terms and conditions; surplus lines licensee; exempt from due diligence search; conditions.**

(1) If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

(a) The insurance shall be procured from a surplus lines licensee;

(b) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201, except that this subdivision shall not prohibit the procurement of disability insurance that has a benefit limit in excess of any benefit limit available from an admitted insurer;

(c) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

(d) Compliance with section 44-5511.

(2) A surplus lines licensee seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is the State of Nebraska shall not be required to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if:

(a) The surplus lines licensee procuring or placing the insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance for a nonadmitted insurer.

**Source:** Laws 1978, LB 836, § 8; Laws 1989, LB 92, § 35; R.S.Supp., 1990, § 44-147.02; Laws 1992, LB 1006, § 10; Laws 2011, LB70, § 7; Laws 2012, LB1064, § 1.

**Cross References**

Nebraska Property and Liability Insurance Guaranty Association, see section 44-2404.

**44-5511 Surplus lines licensee; report; contents; when due.**

On or before March 1 for the quarter ending the preceding December 31, June 1 for the quarter ending the preceding March 31, September 1 for the quarter ending the preceding June 30, and December 1 for the quarter ending the preceding September 30 of each year, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) except for insurance placed or procured on behalf of an exempt commercial purchaser, a sworn statement by the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an

admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

**Source:** Laws 1978, LB 836, § 9; Laws 1989, LB 92, § 36; R.S.Supp.,1990, § 44-147.03; Laws 1992, LB 1006, § 11; Laws 2011, LB70, § 8; Laws 2018, LB799, § 1.  
Effective date July 19, 2018.

**44-5512 Violations; director; hearing; orders; penalty; appeal.**

(1) Whenever the director has reason to believe that any person has engaged in any activities in violation of the Surplus Lines Insurance Act, the director may:

(a) Issue an order and notice of hearing directing such person to cease and desist from engaging in such activities; or

(b) Issue a statement of the charges of violation and a notice of hearing to be held within thirty days to determine whether or not such violation occurred.

(2) Any hearing held pursuant to subsection (1) of this section, and any appeal therefrom, shall be in accordance with the Administrative Procedure Act.

(3) If, after any hearing held pursuant to subsection (1) of this section, the director finds that the person charged has committed a violation as alleged, he or she shall reduce his or her findings to writing and serve a copy of the findings on the person charged and, in addition, the director may order any one or more of the following:

(a) That such person cease and desist from engaging in such activities;

(b) Payment of a fine of not more than five thousand dollars; and

(c) Suspension or revocation of any surplus lines license held by such person for such period of time as the director determines.

(4) Any person who violates a cease and desist order may, after notice and hearing and upon order of the director, be subject to:

(a) Payment of a fine of not more than ten thousand dollars; and

(b) Suspension or revocation of each insurance license held by such person for such period of time as the director determines.

(5) For purposes of this section, person shall include a nonadmitted insurer.

**Source:** Laws 1978, LB 836, § 10; Laws 1989, LB 92, § 37; R.S.Supp.,1990, § 44-147.04; Laws 1992, LB 1006, § 12; Laws 2018, LB799, § 2.  
Effective date July 19, 2018.

**Cross References**

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

**44-5515 Exempt commercial purchaser; taxes; form.**

Every exempt commercial purchaser whose home state is the State of Nebraska shall, on or before March 1 for the quarter ending the preceding December 31, June 1 for the quarter ending the preceding March 31, September 1 for the quarter ending the preceding June 30, and December 1 for the quarter ending the preceding September 30 of each year, pay to the department a tax in the amount required by subsection (2) of section 44-5506. The

calculation of the taxes due pursuant to this section shall be based only on those premiums remitted for the placement or procurement of insurance by an exempt commercial purchaser whose home state is the State of Nebraska. The department shall prescribe a form for an exempt commercial purchaser tax filing.

**Source:** Laws 2007, LB117, § 24; Laws 2011, LB70, § 9; Laws 2016, LB837, § 2.

## **ARTICLE 57**

### **PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS**

Section  
44-5702. Terms, defined.

#### **44-5702 Terms, defined.**

For purposes of the Producer-Controlled Property and Casualty Insurer Act:

(1) Accredited state shall mean a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards established and promulgated from time to time by the National Association of Insurance Commissioners;

(2) Captive insurers shall mean insurance companies owned by another organization the exclusive purpose of which is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds the exclusive purpose of which is to insure risks to member organizations or group members and their affiliates;

(3) Control or controlled shall have the same meaning as in section 44-2121;

(4) Controlled insurer shall mean an insurer which is controlled, directly or indirectly, by a producer;

(5) Controlling producer shall mean a producer which, directly or indirectly, controls an insurer;

(6) Director shall mean the Director of Insurance;

(7) Insurer shall mean any person, firm, association, or corporation holding a certificate of authority to transact property and casualty insurance business in this state. Insurer shall not include:

(a) Residual market pools and joint underwriting authorities or associations; and

(b) Captive insurers other than risk retention groups as defined in 15 U.S.C. 3901 et seq. and 42 U.S.C. 9671, as such sections existed on January 1, 2014; and

(8) Producer shall mean an insurance broker or any other person, firm, association, or corporation when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

**Source:** Laws 1992, LB 1006, § 69; Laws 2014, LB700, § 17.

## ARTICLE 60

## INSURERS AND HEALTH ORGANIZATIONS RISK-BASED CAPITAL ACT

## Section

- 44-6007.02. Health organization, defined.  
 44-6008. Insurer, defined.  
 44-6009. Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.  
 44-6015. Risk-based capital reports.  
 44-6016. Company action level event.

**44-6007.02 Health organization, defined.**

Health organization means a health maintenance organization, prepaid limited health service organization, prepaid dental service corporation, or other managed care organization. Health organization does not include a life and health insurer, a fraternal benefit society, or a property and casualty insurer as defined in section 44-6008 that is otherwise subject to either life and health or property and casualty risk-based capital requirements.

**Source:** Laws 1999, LB 258, § 12; Laws 2013, LB426, § 2.

**44-6008 Insurer, defined.**

Insurer means an insurer as defined in section 44-103 authorized to transact the business of insurance, except that insurer does not include health organizations, unincorporated mutual associations, assessment associations, health maintenance organizations, prepaid dental service corporations, prepaid limited health service organizations, monoline mortgage guaranty insurers, monoline financial guaranty insurers, title insurers, prepaid legal corporations, intergovernmental risk management pools, and any other kind of insurer to which the application of the Insurers and Health Organizations Risk-Based Capital Act, in the determination of the director, would be clearly inappropriate. Insurer includes a risk retention group.

Insurer, when referring to life and health insurers, means an insurer authorized to transact life insurance business and sickness and accident insurance business specified in subdivisions (1) through (4) of section 44-201, or any combination thereof, and also includes fraternal benefit societies authorized to transact business specified in sections 44-1072 to 44-10,109.

Insurer, when referring to property and casualty insurers, means an insurer authorized to transact property insurance business and casualty insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201, or any combination thereof, and also includes an insurer authorized to transact insurance business specified in subdivision (4) of section 44-201 if also authorized to transact insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201.

**Source:** Laws 1993, LB 583, § 20; Laws 1994, LB 978, § 35; Laws 1999, LB 258, § 13; Laws 2013, LB426, § 3; Laws 2014, LB700, § 18.

**44-6009 Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.**

Negative trend, with respect to a life and health insurer or a fraternal benefit society, means a negative trend over a period of time, as determined in



accordance with the trend test calculation included in the life risk-based capital instructions.

**Source:** Laws 1993, LB 583, § 21; Laws 1994, LB 978, § 36; Laws 1999, LB 258, § 14; Laws 2008, LB855, § 29; Laws 2013, LB426, § 4.

#### **44-6015 Risk-based capital reports.**

(1) Every domestic insurer or domestic health organization shall annually, on or prior to March 1, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer or domestic health organization shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer or health organization is authorized to do business if such insurance commissioner has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its risk-based capital report not later than the later of:

(i) Fifteen days after the receipt of notice to file its risk-based capital report with such state; or

(ii) The filing date.

(2) A life and health insurer's or a fraternal benefit society's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(4) A health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in the Insurers and Health Organizations Risk-Based Capital Act and the formulas, schedules, and instructions referenced in the act is desirable in the business of insurance. Accordingly, insurers and health organizations should seek to maintain capital above the risk-based capital levels required by the act. Additional capital is used and useful in the insurance business and helps to secure an insurer or a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the act.

(6) If a domestic insurer or a domestic health organization files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer or health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

**Source:** Laws 1993, LB 583, § 27; Laws 1994, LB 978, § 37; Laws 1999, LB 258, § 20; Laws 2013, LB426, § 5.

#### **44-6016 Company action level event.**

(1) Company action level event means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;

(ii) If a life and health insurer or a fraternal benefit society, the insurer or society has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and has a negative trend;

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions; or

(iv) If a health organization has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test

determined in accordance with the trend test calculation included in the health risk-based capital instructions;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon

notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) or (4) of this section.

**Source:** Laws 1993, LB 583, § 28; Laws 1994, LB 978, § 38; Laws 1999, LB 258, § 21; Laws 2008, LB855, § 30; Laws 2013, LB426, § 6; Laws 2014, LB700, § 19.

## ARTICLE 73

### HEALTH CARRIER GRIEVANCE PROCEDURE ACT

#### Section

44-7306. Grievance register.

44-7308. Grievance review.

44-7309. Repealed. Laws 2013, LB 147, § 24.

44-7310. Standard review of adverse determinations.

44-7311. Expedited reviews.

#### **44-7306 Grievance register.**

(1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a review of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. For each grievance required

to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

- (a) A general description of the reason for the grievance;
- (b) Date received;
- (c) Date of each review or hearing;
- (d) Resolution of the grievance;
- (e) Date of resolution; and
- (f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

**Source:** Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201; Laws 2013, LB147, § 19.

#### **44-7308 Grievance review.**

(1) If a covered person makes a request to a health carrier for a health care service and the request is denied, the health carrier shall provide the covered person with an explanation of the reasons for the denial, a written notice of how to submit a grievance, and the telephone number to call for information and assistance. The health carrier, at the time of a determination not to certify an admission, a continued stay, or other health care service, shall inform the attending or ordering provider of the right to submit a grievance or a request for an expedited review and, upon request, shall explain the procedures established by the health carrier for initiating a review. A grievance involving an adverse determination may be submitted by the covered person, the covered person's representative, or a provider acting on behalf of a covered person, except that a provider may not submit a grievance involving an adverse determination on behalf of a covered person in a situation in which federal or other state law prohibits a provider from taking that action. A health carrier shall ensure that a majority of the persons reviewing a grievance involving an adverse determination have appropriate expertise. A health carrier shall issue a copy of the written decision to a provider who submits a grievance on behalf of a covered person. A health carrier shall conduct a review of a grievance involving an adverse determination in accordance with subsection (3) of this section and section 44-7310, but such a grievance is not subject to the grievance register reporting requirements of section 44-7306 unless it is a written grievance.

(2)(a) A grievance concerning any matter except an adverse determination may be submitted by a covered person or a covered person's representative. A health carrier shall issue a written decision to the covered person or the covered person's representative within fifteen working days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who made the initial determination denying a claim or handling the matter that is the subject of the grievance. If the health carrier

cannot make a decision within fifteen working days due to circumstances beyond the health carrier's control, the health carrier may take up to an additional fifteen working days to issue a written decision, if the health carrier provides written notice to the covered person of the extension and the reasons for the delay on or before the fifteenth working day after receiving a grievance.

(b) A covered person does not have the right to attend, or to have a representative in attendance, at the grievance review. A covered person is entitled to submit written material. The health carrier shall provide the covered person the name, address, and telephone number of a person designated to coordinate the grievance review on behalf of the health carrier. The health carrier shall make these rights known to the covered person within three working days after receiving a grievance.

(3) The written decision issued pursuant to the procedures described in subsections (1) and (2) of this section and section 44-7310 shall contain:

(a) The names, titles, and qualifying credentials of the person or persons acting as the reviewer or reviewers participating in the grievance review process;

(b) A statement of the reviewers' understanding of the covered person's grievance;

(c) The reviewers' decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(d) A reference to the evidence or documentation used as the basis for the decision;

(e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

(f) Notice of the covered person's right to contact the director's office. The notice shall contain the telephone number and address of the director's office.

**Source:** Laws 1998, LB 1162, § 73; Laws 2013, LB147, § 20.

**44-7309 Repealed. Laws 2013, LB 147, § 24.**

**44-7310 Standard review of adverse determinations.**

(1) A health carrier shall establish written procedures for a standard review of an adverse determination. Review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) When reasonably necessary or when requested by the provider acting on behalf of a covered person, standard reviews shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination.

(3) For standard reviews the health carrier shall notify in writing both the covered person and the attending or ordering provider of the decision within fifteen working days after the request for a review. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(4) In any case in which the standard review process does not resolve a difference of opinion between the health carrier and the covered person or the

provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law.

**Source:** Laws 1998, LB 1162, § 75; Laws 2013, LB147, § 21.

#### **44-7311 Expedited reviews.**

(1) A health carrier shall establish written procedures for the expedited review of a grievance involving a situation in which the timeframe of the standard grievance procedures set forth in sections 44-7308 to 44-7310 would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. A request for an expedited review may be submitted orally or in writing. A request for an expedited review of an adverse determination may be submitted orally or in writing and shall be subject to the review procedures of this section, if it meets the criteria of this section. However, for purposes of the grievance register requirements of section 44-7306, a request for an expedited review shall not be included in the grievance register unless the request is submitted in writing. Expedited review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) Expedited reviews which result in an adverse determination shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers shall not have been involved in the initial adverse determination.

(3) A health carrier shall provide expedited review to all requests concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

(4) An expedited review may be initiated by a covered person or a provider acting on behalf of a covered person.

(5) In an expedited review, all necessary information, including the health carrier's decision, shall be transmitted between the health carrier and the covered person or the provider acting on behalf of a covered person by telephone, facsimile, or the most expeditious method available.

(6) In an expedited review, a health carrier shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the review is commenced. If the expedited review is a concurrent review determination, the health care service shall be continued without liability to the covered person until the covered person has been notified of the determination.

(7) A health carrier shall provide written confirmation of its decision concerning an expedited review within two working days after providing notification of that decision, if the initial notification was not in writing. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(8) A health carrier shall provide reasonable access, not to exceed one business day after receiving a request for an expedited review, to a clinical peer who can perform the expedited review.

(9) In any case in which the expedited review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law. Except as expressly provided in this section, in conducting the review, the health carrier shall adhere to timeframes that are reasonable under the circumstances.

(10) A health carrier shall not be required to provide an expedited review for retrospective adverse determinations.

**Source:** Laws 1998, LB 1162, § 76; Laws 2013, LB147, § 22.

## ARTICLE 75

### PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

#### Section

44-7507. Monitoring competition; determining competitive markets; hearing.

#### **44-7507 Monitoring competition; determining competitive markets; hearing.**

(1) The director shall monitor competition and the availability of insurance in commercial insurance markets. Such monitoring may include requests for information from insurers regarding the lines, types, and classes of insurance that the insurer is seeking and able to write. When requested by an insurer with its response, the director shall keep such responses confidential except as they may be compiled in summaries.

(2) If the director finds that a commercial insurance coverage is contributing to problems in the insurance marketplace due to excessive rates or lack of availability, the director shall submit electronically a report of this finding to the Legislature. Such report may be a separate report or a supplement to the annual report required by section 44-113.

(3) A competitive market is presumed to exist unless the director, after notice and hearing in accordance with the Administrative Procedure Act, determines by order that a degree of competition sufficient to warrant reliance upon competition as a regulator of rating systems, policy forms, or both does not exist in the market. In determining whether a sufficient degree of competition exists, the director may consider:

(a) Relevant tests of workable competition pertaining to market structure, market performance, and market conduct;

(b) The practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers;

(c) Whether long-term and short-term profitability provides evidence of excessive rates;

(d) Whether rating systems filed under section 44-7508 would frequently require amendment or disapproval if filed under sections 44-7510 and 44-7511;



(e) Whether additional competition would appear likely to significantly lower rates or improve the policy forms offered to insureds;

(f) Whether rates would be lowered or policy forms would be improved by the imposition of a system of prior approval regulation;

(g) Whether policy forms filed under section 44-7508.02 would frequently require amendment or disapproval if filed under section 44-7513; and

(h) Any other relevant factors.

(4) If a market for a particular type of insurance is found to lack sufficient competition to warrant reliance upon competition as a regulator of rating systems or policy forms, the director shall identify factors that appear to be the cause and the extent to which remediation can be achieved on a short-term or long-term basis. To the extent that significant remediation can be achieved consistent with the other goals of the Property and Casualty Insurance Rate and Form Act, the director shall take such action as may be within the director's authority to accomplish such remediation or to promote the accomplishment of such remediation.

(5) If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of sections 44-7510 and 44-7511 to the rates charged for a type of insurance, an order shall be issued pursuant to this section that applies sections 44-7510 and 44-7511 to the type of insurance. If the director finds pursuant to a hearing held in accordance with subsection (3) of this section that the lack of sufficient competition warrants the application of section 44-7513 to regulate the forms offered for a type of insurance, an order shall be issued pursuant to this section that applies section 44-7513 to the type of insurance. An order issued under this subsection shall expire no later than one year after its original issue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition. Any order that is renewed after its first year shall not exceed three years after reissue unless the director renews the order after a hearing and a finding of a continued lack of sufficient competition.

(6) The director shall keep on file in one location all complaints from the public and insurance industry sources alleging that a competitive market does not exist. The director shall investigate each complaint to the extent necessary to determine the truth of the allegations. The director shall keep a summary of his or her findings and conclusions with the complaint.

**Source:** Laws 2000, LB 1119, § 7; Laws 2003, LB 216, § 20; Laws 2012, LB782, § 55.

#### Cross References

Administrative Procedure Act, see section 84-920.

## ARTICLE 77

### MODEL ACT REGARDING USE OF CREDIT INFORMATION IN PERSONAL INSURANCE

Section  
44-7703. Act; applicability.

#### **44-7703 Act; applicability.**

The Model Act Regarding Use of Credit Information in Personal Insurance applies to personal insurance and not to commercial insurance. For purposes

of the act, personal insurance means private passenger automobile, homeowners, motorcycle, autocycle, mobile homeowners, noncommercial dwelling fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance policies. Such policies must be individually underwritten for personal, family, or household use. No other type of insurance shall be included as personal insurance for purposes of the act.

**Source:** Laws 2003, LB 487, § 3; Laws 2015, LB231, § 1.

## ARTICLE 81

### NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

#### Section

- 44-8101. Act, how cited.
- 44-8102. Purpose of act.
- 44-8103. Applicability of act.
- 44-8104. Act; exemptions.
- 44-8105. Terms, defined.
- 44-8106. Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.
- 44-8107. Insurer; duties; Director of Insurance; powers; violations.
- 44-8108. Insurance producer; duties.
- 44-8109. Changes made to act; applicability.

#### **44-8101 Act, how cited.**

Sections 44-8101 to 44-8109 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

**Source:** Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26; Laws 2012, LB887, § 21.

#### **44-8102 Purpose of act.**

The purpose of the Nebraska Protection in Annuity Transactions Act is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

**Source:** Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27; Laws 2012, LB887, § 22.

#### **44-8103 Applicability of act.**

The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase, exchange, or replacement.

**Source:** Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28; Laws 2012, LB887, § 23.

#### **44-8104 Act; exemptions.**

Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to transactions involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

**Source:** Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29; Laws 2012, LB887, § 24.

#### Cross References

**Burial Pre-Need Sale Act**, see section 12-1101.

#### **44-8105 Terms, defined.**

For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means an annuity that is an insurance product under state law and is individually solicited, whether the product is classified as an individual or group annuity;

(2) Continuing education provider means an individual or entity that is approved to offer continuing education activities pursuant to subsection (1) of section 44-3905;

(3) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(4) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities;

(5) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice;

(6) Replacement means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(b) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) Reissued with any reduction in cash value; or

(e) Used in a financed purchase; and

(7) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and need, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

**Source:** Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30; Laws 2012, LB887, § 25; Laws 2018, LB743, § 28.  
Effective date July 19, 2018.

**44-8106 Recommendation; purchase, exchange, or replacement of annuity; requirements; insurer; duties; insurance producer; prohibited acts; Director of Insurance; powers.**

(1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer. This information shall include the consumer's suitability information, and, if there is a reasonable basis to believe the information, all of the following:

(a) That the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) That the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) That the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity,

and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including the consideration as to whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(2) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as expressly permitted under subsection (4) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under subdivision (4)(b) of this section, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection (1) or (3) of this section related to any annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(b) An insurer's issuance of an annuity subject to subdivision (4)(a) of this section shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) An insurance producer, or if no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation subject to subsection (1) of this section;

(b) Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this section, including, but not limited to, the following requirements:

(i) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this section and shall incorporate such requirements into relevant insurance producer training manuals;

(ii) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 44-8108;

(iii) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(iv) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision shall prevent an insurer from complying with this subdivision by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity; and

(vi) The insurer shall annually provide a report to senior management, including the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision (a) of this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 44-8107 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subdivision (b)(ii) of this subsection.

(ii) An insurer's supervision system under subdivision (a) of this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(A) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(8)(a) Compliance with the Financial Industry Regulatory Authority Rules pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this section if the insurer complies with the requirements of subdivision (6)(b) of this section. This subsection applies to Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the ability of the Director of Insurance to investigate potential violations of and enforce the Nebraska Protection in Annuity Transactions Act.

(b) An insurer seeking to comply with the Financial Industry Regulatory Authority broker-dealer sales of variable annuities and fixed annuities to satisfy the requirements of this section shall:

(i) Monitor the Financial Industry Regulatory Authority member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) Provide to the Financial Industry Regulatory Authority member broker-dealer information and reports that are reasonably appropriate to assist the Financial Industry Regulatory Authority member broker-dealer to maintain its supervision system.

**Source:** Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31; Laws 2012, LB887, § 26.

**44-8107 Insurer; duties; Director of Insurance; powers; violations.**

(1) An insurer is responsible for compliance with the Nebraska Protection in Annuity Transactions Act. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the act; and

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (4)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

**Source:** Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32; Laws 2012, LB887, § 27.

**Cross References**

**Unfair Insurance Trade Practices Act**, see section 44-1521.

**44-8108 Insurance producer; duties.**

(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(2)(a)(i) An insurance producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the Department of Insurance and provided by a department-approved education provider.

(ii) Insurance producers who hold a life insurance line of authority on July 19, 2012, and who desire to sell annuities shall complete the requirements of this subsection within six months after July 19, 2012. Individuals who obtain a life insurance line of authority on or after July 19, 2012, shall not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(b) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four continuing education credits, but may be longer.

(c) The training required under this subsection shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices and replacement and disclosure requirements.

(d) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity training course intended to comply with this subsection shall register as a continuing education provider in this state and comply with the requirements applicable to insurance producer continuing education activities as set forth in section 44-3905.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with sections 44-3901 to 44-3908.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with sections 44-3901 to 44-3908.

(h) The satisfaction of training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection.



(i) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by National Association of Insurance Commissioners-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

**Source:** Laws 2012, LB887, § 28; Laws 2018, LB743, § 29.  
Effective date July 19, 2018.

**44-8109 Changes made to act; applicability.**

The changes made to the Nebraska Protection in Annuity Transactions Act by Laws 2012, LB887, shall apply to solicitations occurring on and after January 1, 2013.

**Source:** Laws 2012, LB887, § 29.

**ARTICLE 82**

**CAPTIVE INSURERS ACT**

Section

44-8216. Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

**44-8216 Creation of special purpose financial captive insurers; applicability of section; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.**

(1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Guaranty of a parent means an agreement to pay specified obligations of the special purpose financial captive insurer by a parent of the special purpose financial captive insurer approved by the director that is not a counterparty and the guarantor has sufficient equity, less the equity of all counterparties that are subsidiaries of the guarantor, to satisfy the agreement during the life of the guaranty;

(c) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(d) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer

contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(e) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(f) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(g) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(h) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(i) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(j) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(c) In determining whether to issue a certificate of authority or to approve an amended plan of operation for a special purpose financial captive insurer required under section 44-8205, the director may consider any additional factors the director may deem relevant, including the specific type of life insurance risks insured by the special purpose financial captive insurer, the financial ability of a parent that issues a guaranty pursuant to this section to satisfy such guaranty, and any actuarial opinions or other statements or documents required by the director to evaluate such application.

(d) At the time a special purpose financial captive insurer files an application for a certificate of authority or submits an amended plan of operation in accordance with section 44-8205, and on each date the special purpose financial captive insurer is required to file an annual financial statement in this state, a senior actuarial officer of each ceding insurer shall file with the director a certification that the ceding insurer's transactions with the special purpose financial captive insurer are not being used to gain an unfair advantage in the

pricing of the ceding insurer's products. A ceding insurer shall not be deemed to have gained an unfair advantage if the pricing of the policies and contracts reinsured by the special purpose financial captive insurer reflects, at the time those policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction and utilizes current pricing assumptions.

(4) A special purpose financial captive insurer may be established as a stock corporation or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; entering into agreements in connection with obtaining guaranties of its parent; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate a special purpose financial captive insurer contract or an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered

into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost-sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director, including letters of credit or guaranties of a parent as described in subsection (9) of this section;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose

financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a)(i) Of the value of:

(A) The assets held in trust;

(B) Clean, or irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director; or

(C) Guaranties of the parent; and

(ii) For the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) Assets of the special purpose financial captive insurer are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding

another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or

determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

**Source:** Laws 2007, LB117, § 50; Laws 2012, LB887, § 30; Laws 2016, LB758, § 2.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**ARTICLE 84**

**MANDATE OPT-OUT AND INSURANCE  
COVERAGE CLARIFICATION ACT**

**Section**

- 44-8401. Act, how cited.  
 44-8402. Legislative findings.  
 44-8403. Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract, or policy; optional rider.  
 44-8404. Act; not construed as right to abortion.

**44-8401 Act, how cited.**

Sections 44-8401 to 44-8404 shall be known and may be cited as the Mandate Opt-Out and Insurance Coverage Clarification Act.

**Source:** Laws 2011, LB22, § 1.

**44-8402 Legislative findings.**

(1) The Legislature finds that:

(a) In the federal Patient Protection and Affordable Care Act, Public Law 111-148, federal tax dollars are routed via affordability credits to qualified health insurance plans offered through a health insurance exchange created under the act, including plans that provide coverage for abortion;

(b) Federal funding for health insurance plans that cover abortions is prohibited by the federal statutory restriction commonly known as the Hyde Amendment and the Federal Employees Health Benefits Program established under Chapter 89 of Title 5 of the United States Code, as amended;

(c) Section 1303 of the federal Patient Protection and Affordable Care Act explicitly permits each state to pass laws prohibiting qualified health insurance plans offered through a health insurance exchange created under the act in such state from offering abortion coverage. Such section allows a state to

prohibit the use of public funds to subsidize health insurance plans that cover abortions within the state;

(d) The laws of the State of Nebraska provide that group health insurance plans or health maintenance agreements paid for with public funds shall not cover abortion unless necessary to prevent the death of the woman;

(e) *Rust v. Sullivan*, 500 U.S. 173 (1991), states that it is permissible for a state to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest; and

(f) A majority of the citizens of the State of Nebraska, like other Americans, oppose the use of public funds, both federal and state, to pay for abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of the Mandate Opt-Out and Insurance Coverage Clarification Act to affirmatively opt out of allowing qualified health insurance plans that cover abortions to participate in health insurance exchanges within the State of Nebraska. Further, it is also the purpose of the act to limit the coverage of abortion in all health insurance plans, contracts, or policies delivered or issued for delivery in the State of Nebraska.

**Source:** Laws 2011, LB22, § 2.

**44-8403 Qualified health insurance plan offered through health insurance exchange; abortion coverage; restriction; health insurance plan, contract, or policy; optional rider.**

(1) No abortion coverage shall be provided by a qualified health insurance plan offered through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148, within the State of Nebraska. This subsection shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the woman or to coverage for medical complications arising from an abortion.

(2) No health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska shall provide coverage for an elective abortion except through an optional rider to the policy for which an additional premium is paid solely by the insured. This subsection applies to any health insurance plan, contract, or policy delivered or issued for delivery in the State of Nebraska by any health insurer, any nonprofit hospital, medical, surgical, dental, or health service corporation, any group health insurer, and any health maintenance organization subject to the laws of insurance in this state and any employer providing self-funded health insurance for his or her employees. This subsection also applies to any plan provision of hospital, medical, surgical, or funeral benefits or of coverage against accidental death or injury if such benefits or coverage are incidental to or a part of any other insurance plan delivered or issued for delivery in the State of Nebraska.

(3) The issuer of a health insurance plan, contract, or policy in the State of Nebraska shall not provide any incentive or discount to an insured if the insured elects abortion coverage.

(4) For purposes of this section, elective abortion means an abortion (a) other than a spontaneous abortion or (b) that is performed for any reason other than to prevent the death of the female upon whom the abortion is performed.

**Source:** Laws 2011, LB22, § 3.



**44-8404 Act; not construed as right to abortion.**

Nothing in the Mandate Opt-Out and Insurance Coverage Clarification Act shall be construed as creating a right to an abortion.

**Source:** Laws 2011, LB22, § 4.

**ARTICLE 85****PORTABLE ELECTRONICS INSURANCE ACT**

## Section

- 44-8501. Act, how cited.
- 44-8502. Terms, defined.
- 44-8503. Vendor; limited lines insurance license; issuance; application; contents.
- 44-8504. Limited lines insurance license; application; contents; period valid; fees.
- 44-8505. Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.
- 44-8506. Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.
- 44-8507. Violations; director; powers; administrative fine.
- 44-8508. Insurer; rights; duties; notice; policy; termination; vendor; duties.
- 44-8509. Records; maintenance.

**44-8501 Act, how cited.**

Sections 44-8501 to 44-8509 shall be known and may be cited as the Portable Electronics Insurance Act.

**Source:** Laws 2011, LB535, § 1.

**44-8502 Terms, defined.**

For purposes of the Portable Electronics Insurance Act:

- (1) Customer means a person who purchases portable electronics;
- (2) Covered customer means a customer who elects coverage pursuant to a portable electronics insurance policy issued to a vendor of portable electronics;
- (3) Director means the Director of Insurance;
- (4) Location means any physical location in this state or any web site, call center, or other site or similar location to which Nebraska customers may be directed;
- (5) Portable electronics means any nonstationary electronic equipment and its accessories capable of communications or data processing or utility including, but not limited to, a laptop, a tablet, a wearable computer, a personal communications device such as a cellular or mobile telephone, a hand-held smart phone, a media player, an e-reader, a personal digital assistant, devices used for data collection, global positioning, or monitoring, and other devices that may or may not incorporate wireless transmitters and receivers. Portable electronics does not include telecommunications switching equipment, transmission wires, cellular site transceiver equipment, or other equipment or system used by a telecommunications company to provide telecommunications service to consumers;
- (6)(a) Portable electronics insurance means insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction or suffer other similar causes of loss; and
- (b) Portable electronics insurance does not include:

(i) A service contract under the Motor Vehicle Service Contract Reimbursement Insurance Act;

(ii) A service contract or extended warranty providing coverage as described in subdivision (2) of section 44-102.01;

(iii) A policy of insurance providing coverage for a seller's or manufacturer's obligations under a warranty; or

(iv) A homeowner's, renter's, private passenger automobile, commercial multiperil, or other similar policy;

(7) Portable electronics transaction means the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer;

(8) Supervising entity means a business entity that is a licensed insurance producer or insurer; and

(9) Vendor means a person in the business of engaging in portable electronics transactions directly or indirectly.

**Source:** Laws 2011, LB535, § 2; Laws 2017, LB306, § 1.

#### Cross References

**Motor Vehicle Service Contract Reimbursement Insurance Act**, see section 44-3520.

#### **44-8503 Vendor; limited lines insurance license; issuance; application; contents.**

(1) A vendor shall hold a limited lines insurance license issued under the Portable Electronics Insurance Act to sell or offer coverage under a policy of portable electronics insurance.

(2) The director may issue a limited lines insurance license under the act. Such license shall authorize an employee or authorized representative of a vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in a portable electronics transaction.

(3) The vendor shall submit an application for a limited lines insurance license pursuant to section 44-8504 to the director, and a list of all locations in this state at which the vendor intends to offer such insurance coverage shall accompany the application. A vendor shall maintain such list and make it available for the director upon request.

(4) Notwithstanding any other provision of law, a limited lines insurance license issued under the act shall authorize the vendor and its employees or authorized representatives to engage in the activities permitted by the act.

**Source:** Laws 2011, LB535, § 3.

#### **44-8504 Limited lines insurance license; application; contents; period valid; fees.**

(1) An application for a limited lines insurance license shall be made to and filed with the director on forms prescribed and furnished by the director.

(2) An application for an initial or a renewal license shall:

(a) Provide the name, residence address, and other information required by the director for an employee or authorized representative of the vendor that is designated by the vendor as the person responsible for the vendor's compliance

with the Portable Electronics Insurance Act. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the information required by this subdivision shall be provided for all persons of record having beneficial ownership of ten percent or more of any class of securities of the vendor registered under federal securities law; and

(b) Provide the location of the vendor's home office.

(3) Any application for licensure under the act for an existing vendor shall be made within ninety days after the application is made available by the director.

(4) An initial license issued pursuant to the act shall be valid for one year and expires on April 30 of each year.

(5) Any vendor licensed under the act shall pay an initial license fee to the director in an amount prescribed by the director but not to exceed one hundred dollars and shall pay a renewal fee in an amount prescribed by the director but not to exceed one hundred dollars.

**Source:** Laws 2011, LB535, § 4.

**44-8505 Brochure or written material; available to customer; contents; certificate of insurance; powers of insurer.**

(1) At each location at which portable electronics insurance is offered to a customer, a brochure or other written material shall be available to the customer which:

(a) Discloses the fact that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other similar insurance coverage;

(b) States that the enrollment by the customer in a portable electronics insurance coverage program is not required in order to purchase or lease portable electronics or services;

(c) Summarizes the material terms of the portable electronics insurance, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) The benefits of the coverage; and

(v) The key terms and conditions of the coverage, including whether portable electronics may be repaired or replaced with a similar reconditioned make or model or with nonoriginal manufacturer parts or equipment;

(d) Summarizes the process for filing a claim, including a description of how to return the portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) States that the customer may cancel enrollment for portable electronics insurance coverage at any time and receive any applicable unearned premium refund on a pro rata basis.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers. A covered customer who elects to enroll for coverage shall receive a certificate of insurance and an explanation of coverage or instructions on how to obtain such materials upon request.

(3) Eligibility and underwriting standards for customers who elect to enroll in portable electronics insurance coverage shall be established by the insurer for each portable electronics insurance program.

**Source:** Laws 2011, LB535, § 5.

**44-8506 Exemption from licensure as insurance producer; conditions; vendor; duties; treatment of funds.**

(1) An employee or authorized representative of a vendor may sell or offer for sale portable electronics insurance to customers and shall not be subject to licensure as an insurance producer if:

(a) The vendor obtains a limited lines insurance license pursuant to section 44-8503 that authorizes its employees or authorized representatives to sell or offer for sale portable electronics insurance under this section;

(b) The insurer issuing the portable electronics insurance directly supervises or appoints a supervising entity to supervise the administration of the insurance program, including development of a training program for employees and authorized representatives of a vendor. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of a vendor who are directly involved in the activity of selling or offering for sale portable electronics insurance;

(ii) The training may be provided in electronic form. If the training is provided in electronic form, the supervising entity shall implement a supplemental education program that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction on the portable electronics insurance offered to customers and the disclosures required by section 44-8505; and

(c) The vendor does not advertise, represent, or otherwise hold itself or any of its employees or authorized representatives out as authorized insurers or licensed insurance producers.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the covered customer's bill. If the portable electronics insurance coverage is included in the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. If such insurance is purchased, the portable electronics insurance coverage offered by the limited lines insurance licensee to a customer is primary over any other insurance coverage applicable to the portable electronics. A vendor who bills and collects such charges shall not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days after receipt. All funds received by a vendor from a covered customer for the sale of portable electronics insurance shall be considered funds held in

trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services.

**Source:** Laws 2011, LB535, § 6.

**44-8507 Violations; director; powers; administrative fine.**

If a vendor violates any provision of the Portable Electronics Insurance Act, the director may, after notice and a hearing:

- (1) Revoke or suspend a limited lines insurance license issued under the act;
- (2) Impose such other penalties, including suspension of the transaction of insurance at specific vendor locations where violations have occurred, as the director deems necessary or convenient to carry out the purposes of the act; and
- (3) Impose an administrative fine of not more than one thousand dollars per violation or five thousand dollars in the aggregate.

**Source:** Laws 2011, LB535, § 7.

**44-8508 Insurer; rights; duties; notice; policy; termination; vendor; duties.**

Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor and enrolled customers with at least thirty days' notice, except that:

(a) An insurer may terminate an enrolled customer's insurance policy upon fifteen days' notice for:

(i) Discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under such policy; or

(ii) Nonpayment of premium; or

(b) An insurer may immediately terminate an enrolled customer's insurance policy:

(i) If the enrolled customer ceases to have active service with the vendor of portable electronics; or

(ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the portable electronics insurance policy and the insurer sends notice of termination to the customer within thirty days after exhaustion of the limit. If such notice is not sent within the thirty-day period, the customer shall continue to be enrolled in such insurance policy notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the customer;

(2) If the insurer changes the terms and conditions, the insurer shall provide the vendor with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of the material changes;

(3) If a portable electronics insurance policy is terminated by a vendor, the vendor shall mail or deliver written notice to each enrolled customer at least thirty days prior to the termination advising the customer of such termination and of the effective date of termination; and

(4) If notice is required under this section, it shall be:

(a) In writing and may be mailed or delivered to a vendor at the vendor's mailing address and to an enrolled customer at such customer's last-known mailing address on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or a commercial mail delivery service; or

(b) In electronic form. Disclosure of notice in electronic form to the enrolled customer shall be provided within thirty days after the purchase of the portable electronics. If notice is delivered in electronic form, the insurer or vendor, as applicable, shall maintain proof that the notice was sent.

**Source:** Laws 2011, LB535, § 8; Laws 2017, LB306, § 2.

#### **44-8509 Records; maintenance.**

Any records pertaining to transactions under the Portable Electronics Insurance Act shall be kept available and open to inspection by the director or his or her representatives with notice and during business hours. Records shall be maintained for three years following the completion of transactions under the act.

**Source:** Laws 2011, LB535, § 9.

## **ARTICLE 86**

### **INSURED HOMEOWNERS PROTECTION ACT**

#### Section

- 44-8601. Act, how cited.
- 44-8602. Terms, defined.
- 44-8603. Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.
- 44-8604. Residential contractor; prohibited acts.
- 44-8605. Post-loss assignment of rights or benefits; requirements; Department of Insurance; duties.
- 44-8606. Residential contractor; furnish itemized description; contents.
- 44-8607. Notice required.
- 44-8608. Violation of act; void contract.

#### **44-8601 Act, how cited.**

Sections 44-8601 to 44-8608 shall be known and may be cited as the Insured Homeowners Protection Act.

**Source:** Laws 2012, LB943, § 1; Laws 2018, LB743, § 30.  
Effective date July 19, 2018.

#### **44-8602 Terms, defined.**

For purposes of the Insured Homeowners Protection Act:

(1) Residential contractor means a person in the business of contracting or offering to contract with an owner or possessor of residential real estate to:

(a) Repair or replace a roof system or perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate;

(b) Perform interior or exterior cleanup services on residential real estate;

(c) Arrange for, manage, or process the work referred to in subdivision (1)(a) or (b) of this section; or

(d) Serve as a representative, agent, or assignee of the owner or possessor of residential real estate;

(2) Residential real estate means a new or existing building, including a detached garage, constructed for habitation by at least one but no more than four families; and

(3) Roof system means and includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

**Source:** Laws 2012, LB943, § 2; Laws 2018, LB743, § 31.

Effective date July 19, 2018.

**44-8603 Contract to be paid from proceeds of property and casualty insurance policy; right to cancel; notice; residential contractor; duties.**

(1) A person who has entered into a written contract with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract prior to midnight on the later of the third business day after the person has (a) entered into the written contract or (b) received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy. Cancellation shall be evidenced by the person giving written notice of the cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the contract. Written notice of cancellation may be given by delivering or mailing a signed and dated copy of the written notice of cancellation to the residential contractor at the address of the residential contractor's place of business as stated in the contract. The notice of cancellation shall include a copy of the written notice from the person's insurer, if applicable, to the effect that all or part of the claim or contract is not a covered loss under the insurance policy. Notice of cancellation given by mail shall be effective upon deposit in the United States mail, postage prepaid, if properly addressed to the residential contractor. Notice of cancellation is not required to be in any particular form and is sufficient if the notice indicates, by any form of written expression, the intent of the insured not to be bound by the contract.

(2) Within ten days after a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy has been canceled by notification pursuant to this section, the residential contractor shall tender to the person canceling the contract any payments, partial payments, or deposits made by the person and any note or other evidence of indebtedness, except that if the residential contractor has provided any goods or services agreed to by such person in writing to be necessary to prevent damage to the premises, the residential contractor shall be entitled to be paid the reasonable value of such goods or services. Any provision in a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy that requires the payment of any fee which is not for such goods or services shall not be enforceable against any person who has canceled a contract pursuant to this section.

**Source:** Laws 2012, LB943, § 3.

**44-8604 Residential contractor; prohibited acts.**

A residential contractor shall not promise to rebate any portion of an insurance deductible as an inducement to the sale of goods or services. A

promise to rebate any portion of an insurance deductible includes granting any allowance or offering any discount against the fees to be charged or paying an insured or a person directly or indirectly associated with the residential real estate any form of compensation, except for any item of nominal value.

**Source:** Laws 2012, LB943, § 4.

**44-8605 Post-loss assignment of rights or benefits; requirements; Department of Insurance; duties.**

(1) A post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate shall comply with the following:

(a) The assignment may authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering residential real estate;

(b) The assignment shall be provided to the insurer of the residential real estate within five business days after execution;

(c) The assignment shall include a statement that the residential contractor has made no assurances that the claimed loss will be fully covered by an insurance contract and shall include the following notice in capitalized fourteen-point type:

YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. WITH AN ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU, THE INSURED HOMEOWNER, HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING.

THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY.

(d) The assignment shall not impair the interest of a mortgagee listed on the declarations page of the property and casualty insurance policy which is the subject of the assignment; and

(e) The assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.

(2) The Department of Insurance shall strictly enforce the provisions of subdivision (13) of section 44-1540, which requires insurers to provide a named insured a reasonable and accurate explanation of the basis for the denial of a claim or an offer of a compromise settlement.

**Source:** Laws 2018, LB743, § 32.

Effective date July 19, 2018.

**44-8606 Residential contractor; furnish itemized description; contents.**

Prior to commencement of repair or replacement work, a residential contractor shall furnish the insured and insurer with an itemized description of the work to be done and the materials, labor, and fees for repair or replacement of the damaged residential real estate and the total itemized amount agreed to be paid for the work to be performed, except that the description shall not limit



the insured or residential contractor from identifying other goods and services necessary to complete repairs or replacement associated with a covered loss.

**Source:** Laws 2018, LB743, § 33.

Effective date July 19, 2018.

#### **44-8607 Notice required.**

Any written contract, repair estimate, or work order prepared by a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy shall include the following notice of the prohibition contained in section 44-8604 in capitalized fourteen-point type which shall be signed by the named insured and sent to the named insured's insurer prior to payment of proceeds under the applicable insurance policy:

IT IS A VIOLATION OF THE INSURANCE LAWS OF NEBRASKA TO REBATE ANY PORTION OF AN INSURANCE DEDUCTIBLE AS AN INDUCEMENT TO THE INSURED TO ACCEPT A RESIDENTIAL CONTRACTOR'S PROPOSAL TO REPAIR DAMAGED PROPERTY. REBATE OF A DEDUCTIBLE INCLUDES GRANTING ANY ALLOWANCE OR OFFERING ANY DISCOUNT AGAINST THE FEES TO BE CHARGED FOR WORK TO BE PERFORMED OR PAYING THE INSURED HOMEOWNER THE DEDUCTIBLE AMOUNT SET FORTH IN THE INSURANCE POLICY.

THE INSURED HOMEOWNER IS PERSONALLY RESPONSIBLE FOR PAYMENT OF THE DEDUCTIBLE. THE INSURANCE FRAUD ACT AND NEBRASKA CRIMINAL STATUTES PROHIBIT THE INSURED HOMEOWNER FROM ACCEPTING FROM A RESIDENTIAL CONTRACTOR A REBATE OF THE DEDUCTIBLE OR OTHERWISE ACCEPTING ANY ALLOWANCE OR DISCOUNT FROM THE RESIDENTIAL CONTRACTOR TO COVER THE COST OF THE DEDUCTIBLE. VIOLATIONS MAY BE PUNISHABLE BY CIVIL OR CRIMINAL PENALTIES.

**Source:** Laws 2018, LB743, § 34.

Effective date July 19, 2018.

#### **Cross References**

**Insurance Fraud Act**, see section 44-6601.

#### **44-8608 Violation of act; void contract.**

A contract entered into with a residential contractor is void if the residential contractor violates any provision of the Insured Homeowners Protection Act.

**Source:** Laws 2018, LB743, § 35.

Effective date July 19, 2018.

### **ARTICLE 87**

#### **NEBRASKA EXCHANGE TRANSPARENCY ACT**

##### **Section**

- 44-8701. Repealed. Laws 2017, LB644, § 21.
- 44-8702. Repealed. Laws 2017, LB644, § 21.
- 44-8703. Repealed. Laws 2017, LB644, § 21.
- 44-8704. Repealed. Laws 2017, LB644, § 21.
- 44-8705. Repealed. Laws 2017, LB644, § 21.
- 44-8706. Repealed. Laws 2017, LB644, § 21.

#### **44-8701 Repealed. Laws 2017, LB644, § 21.**

**44-8702 Repealed. Laws 2017, LB644, § 21.**

**44-8703 Repealed. Laws 2017, LB644, § 21.**

**44-8704 Repealed. Laws 2017, LB644, § 21.**

**44-8705 Repealed. Laws 2017, LB644, § 21.**

**44-8706 Repealed. Laws 2017, LB644, § 21.**

## ARTICLE 88

### HEALTH INSURANCE EXCHANGE NAVIGATOR REGISTRATION ACT

#### Section

44-8801. Act, how cited.

44-8802. Terms, defined.

44-8803. Navigator; registration required; prohibited acts.

44-8804. Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.

44-8805. Registrations; term; renewal; application; fee; federal training and continuing education requirements.

44-8806. Navigator; individual with existing health insurance coverage; information.

44-8807. Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.

44-8808. Rules and regulations.

#### **44-8801 Act, how cited.**

Sections 44-8801 to 44-8808 shall be known and may be cited as the Health Insurance Exchange Navigator Registration Act.

**Source:** Laws 2013, LB568, § 1.

#### **44-8802 Terms, defined.**

For purposes of the Health Insurance Exchange Navigator Registration Act:

(1) Director means the Director of Insurance;

(2) Exchange means any health insurance exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services; and

(3) Navigator means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3), as such section existed on January 1, 2013.

**Source:** Laws 2013, LB568, § 2.

#### **44-8803 Navigator; registration required; prohibited acts.**

(1) No individual or entity shall perform, offer to perform, or advertise any service as a navigator in this state unless registered as a navigator by the director.

(2) A navigator shall not:

(a) Engage in any activities that would require an insurance producer license;

(b) Violate section 44-4050;

(c) Recommend or endorse a particular health plan;

(d) Accept any compensation or consideration from an insurance company, broker, or consultant that is dependent, in whole or in part, on whether a person enrolls in or purchases a qualified health plan; or

(e) Fail to respond to any written inquiry from the director regarding the navigator's duties as a navigator or fail to request additional reasonable time to respond within fifteen working days.

**Source:** Laws 2013, LB568, § 3.

**44-8804 Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.**

(1) An individual applying for an individual navigator registration shall make application to the director on a form developed by the director which, unless preempted by federal law, is accompanied by the initial individual registration fee in an amount not to exceed twenty-five dollars as established by the director. The individual shall declare in the application under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has successfully passed an examination prescribed by an exchange established or operating in this state and has been authorized to act as a navigator; and

(c) Has identified any entity navigator with which he or she is affiliated and supervised.

(2) An entity applying for an entity navigator registration shall make application on a form developed by the director and which contains the information prescribed by the director and which, unless preempted by federal law, is accompanied by the initial entity registration fee in an amount not to exceed fifty dollars as established by the director.

(3) The director may require any documents deemed necessary to verify the information contained in an application submitted in accordance with subsections (1) and (2) of this section.

(4) A registered navigator shall, in a manner prescribed by the director, notify the director within thirty days of any federal action that restricts or terminates the navigator's authorization to act as a navigator.

(5) A registered entity navigator shall, in a manner prescribed by the director, provide the director with a list of all individual navigators that it employs, supervises, or is affiliated with.

**Source:** Laws 2013, LB568, § 4.

**44-8805 Registrations; term; renewal; application; fee; federal training and continuing education requirements.**

(1) Individual and entity registrations shall expire one year after the date of issuance.

(2) An individual navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law,

shall pay the renewal fee in an amount not to exceed twenty-five dollars as established by the director, and an entity navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed fifty dollars as established by the director. An individual navigator who fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director, and an entity navigator that fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director.

(3) Any failure to fulfill the federal ongoing training and continuing education requirements shall result in the expiration of the registration.

**Source:** Laws 2013, LB568, § 5.

**44-8806 Navigator; individual with existing health insurance coverage; information.**

On contact with an individual who acknowledges having existing health insurance coverage obtained through a licensed insurance producer, a navigator shall make a reasonable effort to inform the individual that he or she may, but is not required to, seek further assistance from that producer or another licensed producer for information, assistance, and any other services and that tax credits may not be available to offset the premium cost of plans that are marketed outside of the exchange.

**Source:** Laws 2013, LB568, § 6.

**44-8807 Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.**

(1) The director, after notice and hearing, may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator registration for violation of the Health Insurance Exchange Navigator Registration Act.

(2) Except as otherwise provided by law, the director may examine and investigate the business affairs and records of any navigator as such business affairs and records regard the navigator's duties as a navigator to determine whether the navigator has engaged or is engaging in any violation of the act.

(3) An entity navigator registration may be suspended or revoked or renewal or reinstatement thereof may be refused if the director finds, after notice and hearing, that an individual navigator's violation was known by the employing or supervising entity navigator and the violation was not reported to the director and no corrective action was undertaken.

**Source:** Laws 2013, LB568, § 7.

**44-8808 Rules and regulations.**

The director may adopt and promulgate rules and regulations to carry out the Health Insurance Exchange Navigator Registration Act.

**Source:** Laws 2013, LB568, § 8.

## ARTICLE 89

## STANDARD VALUATION ACT

## Section

- 44-8901. Act, how cited.
- 44-8902. Applicability of act.
- 44-8903. Terms, defined.
- 44-8904. Director; valuation of reserves; duties; powers.
- 44-8905. Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.
- 44-8906. Minimum standard of valuation; applicability to contracts; when.
- 44-8907. Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.
- 44-8908. Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.
- 44-8909. Reserves; company; duties.
- 44-8910. Company; submit data.
- 44-8911. Confidential information; how treated; director; powers; release of material; when.
- 44-8912. Director; exempt specific product forms or product lines; provisions applicable.

**44-8901 Act, how cited.**

Sections 44-8901 to 44-8912 shall be known and may be cited as the Standard Valuation Act.

**Source:** Laws 2014, LB755, § 1.

**44-8902 Applicability of act.**

Except as provided in sections 44-8905, 44-8906, and 44-8907, the Standard Valuation Act applies to those policies and contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908.

**Source:** Laws 2014, LB755, § 2.

**44-8903 Terms, defined.**

For the purposes of the Standard Valuation Act:

(1) Accident and health insurance contract means a contract that incorporates morbidity risk and provides protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual;

(2) Appointed actuary means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in sections 44-421 to 44-425 and 44-8905;

(3) Company means an entity which has (a) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim or (b) written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state;

(4) Deposit-type contract means a contract that does not incorporate mortality or morbidity risks and as may be specified in the valuation manual;

(5) Director means the Director of Insurance;

(6) Life insurance contract means a contract that incorporates mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(7) Policyholder behavior means any action a policyholder, a contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to the act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) Principle-based valuation means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with section 44-8909 as specified in the valuation manual;

(9) Qualified actuary means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual;

(10) Reserves means reserve liabilities;

(11) Tail risk means a risk that occurs either when the frequency of low probability events is higher than expected under a normal probability distribution or when there are observed events of very significant size or magnitude; and

(12) Valuation manual means the valuation manual prescribed by the director which conforms substantially to the valuation manual developed and adopted by the National Association of Insurance Commissioners.

**Source:** Laws 2014, LB755, § 3.

#### **44-8904 Director; valuation of reserves; duties; powers.**

The director shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, accident and health insurance contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in the Standard Valuation Act.

**Source:** Laws 2014, LB755, § 4.

#### **Cross References**

For operative date of valuation manual, see section 44-8908.

#### **44-8905 Company; opinion of actuary; contents; standards; liability; confidentiality; director; powers; release of material; when.**

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assump-

tions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The valuation manual shall prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to regulation by the director, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (1) of this section an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(3) Each opinion required by subsection (2) of this section shall be governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director, shall be prepared to support each actuarial opinion; and

(b) If the company fails to provide a supporting memorandum at the request of the director within a period specified in the valuation manual or the director determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director.

(4) Every opinion shall be governed by the following provisions:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the director;

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserves for each year ending on or after the operative date of the valuation manual;

(c) The opinion shall apply to all policies and contracts subject to subsection (2) of this section, plus other actuarial liabilities as may be specified in the valuation manual;

(d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor and on such additional standards as may be prescribed in the valuation manual;

(e) In the case of an opinion required to be submitted by a foreign or alien company, the director may accept the opinion filed by that company with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person other than the insurance company and

the director for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion; and

(g) Disciplinary action by the director against the company or the appointed actuary shall be as set forth in rules and regulations adopted and promulgated by the director.

(5)(a) Documents, materials, or other information in the possession or control of the director that are a memorandum in support of the opinion and any other material provided by the company to the director in connection with the memorandum shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information.

(b) In order to assist in the performance of the director's duties, the director:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

(ii) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(c) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing information pursuant to this subsection.

(d) A memorandum in support of the opinion, and any other material provided by the company to the director in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by rules and regulations.

(e) The memorandum or other material may otherwise be released by the director with the written consent of the company or to the American Academy of Actuaries pursuant to a request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material.



(f) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

**Source:** Laws 2014, LB755, § 5.

**Cross References**

For operative date of valuation manual, see section 44-8908.

**44-8906 Minimum standard of valuation; applicability to contracts; when.**

For accident and health insurance contracts issued on or after the operative date of the valuation manual designated in subsection (2) of section 44-8908, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8904. For disability and sickness and accident insurance contracts issued on or after the operative date defined in section 44-407.07 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted and promulgated by the director by rule and regulation.

**Source:** Laws 2014, LB755, § 6.

**44-8907 Life insurance; standards of valuation; policies issued on or after operative date of law; reserves required.**

(1) This section shall apply to only those policies and contracts issued on or after the operative date defined in section 44-407.07 (the Standard Nonforfeiture Law for Life Insurance), except as otherwise provided in subsection (3) of this section for all annuities and pure endowments purchased on or after the operative date of such subsection (3) under group annuity and pure endowment contracts issued prior to such operative date defined in section 44-407.07. This section shall apply to all policies and contracts issued prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908, and sections 44-8908 and 44-8909 shall not apply to any such policies and contracts.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to August 30, 1981, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (3) and (4) of this section, the minimum standard for the valuation of all such policies and contracts shall be the Commissioners Reserve Valuation Methods defined in subsections (5), (6), and (9) of this section; five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the cases of policies and contracts, other than annuity and pure endowment contracts, issued on or after September 2, 1973, four percent interest for such policies issued prior to August 24, 1979, and four and one-half percent interest for such policies issued on or after August 24, 1979; and the following tables: (a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of section 44-407.08 (Standard Nonforfeiture Law for Life Insurance), the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date and prior to the operative date of section

44-407.24, except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies on or after the operative date of section 44-407.24 (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of section 44-407.09 (Standard Nonforfeiture Law for Life Insurance), and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; (c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Department of Insurance; (d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved by the Department of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts; (e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies; (f) for accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and (g) for group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the Department of Insurance.

(3) Except as provided in subsection (4) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioners Reserve Valuation Methods defined in subsections (5) and (6) of this section and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) For individual single premium immediate annuity contracts issued on or after August 24, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and seven and one-half percent interest;

(c) For individual annuity and pure endowment contracts issued on or after August 24, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 Individual Annuity Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the director, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(d) For all annuities and pure endowments purchased prior to August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Department of Insurance, and six percent interest; and

(e) For all annuities and pure endowments purchased on or after August 24, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the Department of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the director, and seven and one-half percent interest.

(4)(a) The calendar year statutory valuation interest rates as defined in this subsection shall be used in determining the minimum standard for the valuation of all life insurance policies issued in a particular calendar year, on or after the operative date of section 44-407.02; all individual annuity and pure endow-

ment contracts issued in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981; all annuities and pure endowments purchased in a particular calendar year on or after January 1 of the calendar year next following August 30, 1981, under group annuity and pure endowment contracts; and the net increase, if any, in a particular calendar year after January 1 of the calendar year next following August 30, 1981, in amounts held under guaranteed interest contracts.

(b)(i) The calendar year statutory valuation interest rates shall be determined as provided in subdivision (4)(b)(i) of this section and the results rounded to the nearer one-quarter of one percent: (A) For life insurance, the calendar year statutory valuation interest rate shall be equal to the sum of (I) three percent; (II) the weighting factor defined in this subsection multiplied by the difference between the lesser of the reference interest rate defined in this subsection and nine percent, and three percent; and (III) one-half the weighting factor defined in this subsection multiplied by the difference between the greater of the reference interest rate defined in this subsection and nine percent, and nine percent. (B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, the calendar year statutory valuation interest rates shall be equal to the sum of (I) three percent and (II) the weighting factor defined in this subsection multiplied by the difference between the reference interest rate defined in this subsection and three percent. (C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subdivision (4)(b)(i)(B) of this section, the formula for life insurance in subdivision (4)(b)(i)(A) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less. (D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply. (E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities in subdivision (4)(b)(i)(B) of this section shall apply. (F) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 44-407.24 becomes operative.

(ii) The weighting factors referred to in the formulas stated in this subsection are as follows: (A) For life insurance, with a guarantee duration of ten years or less, the weighting factor is .50; with a guarantee duration of more than ten

years but not more than twenty years, the weighting factor is .45; and with a guarantee duration of more than twenty years, the weighting factor is .35. For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy. (B) The weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options is .80. (C) The weighting factors for other annuities and for guaranteed interest contracts, except as stated in subdivision (4)(b)(ii)(B) of this section, are as follows, according to plan type as defined in this subdivision: (I) For annuities and guaranteed interest contracts valued on an issue-year basis with a guarantee duration of five years or less, the weighting factor is .80 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than five years but not more than ten years, the weighting factor is .75 for plan type A, .60 for plan type B, and .50 for plan type C; with a guarantee duration of more than ten years but not more than twenty years, the weighting factor is .65 for plan type A, .50 for plan type B, and .45 for plan type C; and with more than twenty years guarantee duration the weighting factor is .45 for plan type A, .35 for plan type B, and .35 for plan type C. (II) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, the weighting factors are the factors shown in subdivision (4)(b)(ii)(C)(I) of this section increased by .05 for all plan types. (III) For annuities and guaranteed interest contracts valued on a change in fund basis, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(II) of this section increased by .10 for plan type A, increased by .20 for plan type B, and not increased for plan type C. (IV) For annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the weighting factors are the factors as computed in subdivision (4)(b)(ii)(C)(III) of this section increased by .05 for all plan types. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(c) Plan types used in this subsection are defined as follows: Under plan type A, at any time a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, without such an adjustment but in installments over five years or more, or as an immediate life annuity, or no withdrawal may be permitted. Under plan type B, before expiration of the interest rate guarantee, a policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company or without such an adjustment but in installments over five years or

more, or no withdrawal may be permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years. Under plan type C, a policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either without an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(d) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this subsection, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in this subsection shall be defined as follows: (i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the reference monthly average as defined in this subsection. (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the reference monthly average as defined in this subsection. (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration in excess of ten years the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (4)(e)(ii) of this section, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the reference monthly average as defined in this subsection. (vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision (4)(e)(ii) of this section, the average over a

period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the reference monthly average as defined in this subsection.

(f) The reference monthly average referred to in this subsection shall mean a monthly bond yield average which is published by a national financial statistical organization, recognized by the National Association of Insurance Commissioners, in current general use in the insurance industry, and designated by the Director of Insurance. In the event that the National Association of Insurance Commissioners determines that an alternative method for determination of the reference interest rate is necessary, an alternative method, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the Department of Insurance, may be substituted.

(5)(a) Except as otherwise provided in subsections (6) and (9) of this section and section 44-8906, reserves according to the Commissioners Reserve Valuation Methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (i) over (ii), as follows: (i) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due, except that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy; (ii) a net one year term premium for such benefits provided for in the first policy year.

(b) For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the Commissioners Reserve Valuation Methods as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (9) of this section, be the greater of the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section, and the reserve as of such policy anniversary calculated as described in subdivision (5)(a) of this section but with (i) the net level annual premium calculated as described in subdivision (5)(a) of this section being reduced by fifteen percent of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being

considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (2) and (4) of this section shall be used.

(c) Reserves according to the Commissioners Reserve Valuation Methods for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership, limited liability company, or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations shall be the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(7)(a) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (5), (6), (9), and (10) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(b) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by sections 44-420 to 44-427.



(8)(a) Reserves for all policies and contracts issued prior to August 30, 1981, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(b) Reserves for any category of policies, contracts, or benefits as established by the Department of Insurance, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard provided under the Standard Valuation Act, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(c) A company which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under the Standard Valuation Act may adopt a lower standard of valuation with the approval of the director, but not lower than the minimum standard provided under the act. For the purposes of this subdivision, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by section 44-8905 shall not be deemed to be the adoption of a higher standard of valuation.

(9) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract, but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (2) and (4) of this section.

For any life insurance policy issued on or after January 1 of the fourth calendar year commencing after August 30, 1981, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (5) of this section, ignoring subdivision (5)(b) of this section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (5) of this section, including subdivision (5)(b) of this section, and the minimum reserve calculated in accordance with this subsection.

(10) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the

insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (5), (6), and (9) of this section, the reserves which are held under any such plan must (a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and (b) be computed by a method which is consistent with the principles of this section as determined by regulations promulgated by the Department of Insurance.

**Source:** Laws 1913, c. 154, § 94, p. 437; R.S.1913, § 3231; Laws 1919, c. 190, tit. V, art. VI, § 2, p. 618; C.S.1922, § 7830; C.S.1929, § 44-502; Laws 1943, c. 106, § 1(3), p. 356; R.S.1943, § 44-404; Laws 1959, c. 205, § 1, p. 715; Laws 1961, c. 221, § 2, p. 655; Laws 1963, c. 266, § 2, p. 796; Laws 1965, c. 262, § 1, p. 732; Laws 1967, c. 270, § 1, p. 730; Laws 1973, LB 309, § 2; Laws 1979, LB 354, § 2; Laws 1981, LB 355, § 1; Laws 1993, LB 121, § 224; Laws 1995, LB 574, § 43; R.S.1943, (2010), § 44-404; Laws 2014, LB755, § 7.

#### Cross References

For determination of operative date, see section 44-407.23.

Mortality tables, see Appendix, Reissue, Vol. 2A, 2016.

#### **44-8908 Valuation manual; director prescribe; designate operative date; when effective; contents; director; powers.**

(1) For policies issued on or after the operative date of the valuation manual designated in subsection (2) of this section, the standard prescribed in the valuation manual is the minimum standard of valuation required under section 44-8905 except as provided under subsections (5) and (7) of this section.

(2) The director shall prescribe the valuation manual no later than July 1, 2017. The director shall designate the operative date of the valuation manual as of January 1 after the date on which the director prescribes the valuation manual.

(3) Unless a change in the valuation manual specifies a later effective date, the changes adopted by the director to the valuation manual shall be effective on January 1 following the adoption of the change by the director.

(4) The valuation manual must specify all of the following:

(a) Minimum valuation standards for and definitions of the policies or contracts subject to section 44-8904. Such minimum valuation standards shall be:

(i) The director's reserve valuation method for life insurance contracts, other than annuity contracts, subject to section 44-8904;

(ii) The director's annuity reserve valuation method for annuity contracts subject to section 44-8904; and

(iii) Minimum reserves for all other policies or contracts subject to section 44-8904;

(b) Which policies or contracts or types of policies or contracts are subject to the requirements of a principle-based valuation in subsection (1) of section 44-8909 and the minimum valuation standards consistent with those requirements;

(c) For policies and contracts subject to a principle-based valuation under section 44-8909:

(i) Requirements for the format of reports to the director under subdivision (2)(c) of section 44-8909 which shall include information necessary to determine if the valuation is appropriate and in compliance with the Standard Valuation Act;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

(d) For policies not subject to a principle-based valuation under section 44-8909, the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual designated in subsection (2) of this section; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls; and

(f) The data and form of the data required under section 44-8910 and with whom the data must be submitted.

The valuation manual may specify other requirements, including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director, in compliance with the act, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the director by rule and regulation.

(6) The director may employ or contract with a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company or to review and opine on a company's compliance with any requirement set forth in the act. The director may rely upon the opinion, regarding provisions contained within the act, of a qualified actuary engaged by the insurance commissioner of another state, district, or territory of the United States.

(7) The director may require a company to change any assumption or method that in the opinion of the director is necessary in order to comply with the requirements of the valuation manual or the act and the company shall adjust the reserves as required by the director. The director may take other disciplinary action pursuant to law.

**Source:** Laws 2014, LB755, § 8.

**44-8909 Reserves; company; duties.**

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the valuation must reflect conditions appropriately adverse to quantify the tail risk;

(b) Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(c) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall:

(A) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(B) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience; and

(d) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(a) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) Provide to the director and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year; and

(c) Develop, and file with the director upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

**Source:** Laws 2014, LB755, § 9.

**44-8910 Company; submit data.**

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

**Source:** Laws 2014, LB755, § 10.

**44-8911 Confidential information; how treated; director; powers; release of material; when.**

(1) For purposes of this section, confidential information means:

(a) A memorandum in support of an opinion submitted under section 44-8905 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such memorandum;

(b) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in the course of an examination made under subsection (6) of section 44-8908, except that if an examination report or other material prepared in connection with an examination made under the Insurers Examination Act is not held as private and confidential information under the act, an examination report or other material prepared in connection with an examination made under subsection (6) of section 44-8908 shall not be confidential information to the same extent as if such examination report or other material had been prepared under the Insurers Examination Act;

(c) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under subdivision (2)(b) of section 44-8909 evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such reports, documents, materials, and other information;

(d) Any principle-based valuation report developed under subdivision (2)(c) of section 44-8909 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such report; and

(e) Any data, documents, materials, and other information submitted by a company under section 44-8910, known as experience data, and any other data, documents, materials, and information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, known as experience materials, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the director or any other person in connection with such experience data and experience materials.

(2)(a) Except as provided in this section, a company's confidential information is confidential by law and privileged and shall not be a public record

subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, except that the director may use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director's official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director's duties, the director may share confidential information (i) with other state, federal, and international regulatory agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries and (ii) in the case of confidential information specified in subdivisions (1)(a) and (b) of this section, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings. The recipient must agree, and must have the legal authority to agree, to maintain the confidentiality and privileged status of such data, documents, materials, and other information in the same manner and to the same extent as required for the director.

(d) The director may receive data, documents, materials, and other information, including otherwise confidential and privileged data, documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any data, document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the data, document, material, or other information.

(e) The director may enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (2)(c) of this section.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under subsection (2) of this section shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Regulatory agency, law enforcement agency, and the National Association of Insurance Commissioners include employees, agents, consultants, and contractors of such entities.

(3) Notwithstanding subsection (2) of this section, any confidential information specified in subdivisions (1)(a) and (d) of this section:

(a) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under section 44-8905 or principle-based valuation report developed under subdivision (2)(c) of section 44-8909 by

reason of an action required by the Standard Valuation Act or by rule and regulation;

(b) May otherwise be released by the director with the written consent of the company; and

(c) Once any portion of a memorandum in support of an opinion submitted under section 44-8905 or a principle-based valuation report developed under subdivision (2)(c) of section 44-8909 is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

**Source:** Laws 2014, LB755, § 11.

#### Cross References

**Insurers Examination Act**, see section 44-5901.

#### **44-8912 Director; exempt specific product forms or product lines; provisions applicable.**

(1) The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of section 44-8908 if:

(a) The director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual designated in subsection (2) of section 44-8908 in addition to any requirements established by the director and by rule and regulation.

(2) For any company granted an exemption under this section, sections 44-420 to 44-427, 44-8906, and 44-8907 shall be applicable. With respect to any company applying this exemption, any reference to section 44-8908 found in such sections shall not be applicable.

**Source:** Laws 2014, LB755, § 12.

## ARTICLE 90

### RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

#### Section

- 44-9001. Act, how cited.
- 44-9002. Purposes of act; applicability.
- 44-9003. Legislative findings and declaration.
- 44-9004. Terms, defined.
- 44-9005. Risk management framework.
- 44-9006. Own risk and solvency assessment.
- 44-9007. Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.
- 44-9008. Act; exemptions; waiver; director; considerations; director; powers.
- 44-9009. Own risk and solvency assessment summary report; documentation and supporting information.
- 44-9010. Confidentiality; director; powers; sharing and use of information; written agreement; contents.
- 44-9011. Failure to file own risk and solvency assessment summary report; penalty.

#### **44-9001 Act, how cited.**

Sections 44-9001 to 44-9011 shall be known and may be cited as the Risk Management and Own Risk and Solvency Assessment Act.

**Source:** Laws 2014, LB700, § 1.

**44-9002 Purposes of act; applicability.**

(1) The purposes of the Risk Management and Own Risk and Solvency Assessment Act are to provide requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the director.

(2) The requirements of the act apply to all insurers domiciled in this state unless exempt pursuant to section 44-9008.

**Source:** Laws 2014, LB700, § 2.

**44-9003 Legislative findings and declaration.**

The Legislature finds and declares that the own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks that is material and relevant to the insurer or insurance group filing the report. The information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the Legislature that the own risk and solvency assessment summary report shall be a confidential document filed with the director, that the own risk and solvency assessment summary report shall be shared only as provided in the Risk Management and Own Risk and Solvency Assessment Act and to assist the director in the performance of his or her duties, and that in no event shall the own risk and solvency assessment summary report be subject to public disclosure.

**Source:** Laws 2014, LB700, § 3.

**44-9004 Terms, defined.**

For purposes of the Risk Management and Own Risk and Solvency Assessment Act:

(1) Director means the Director of Insurance;

(2) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in subdivision (6) of section 44-2121;

(3) Insurer has the same meaning as in section 44-103, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(4) Own risk and solvency assessment means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

(5) Own risk and solvency assessment guidance manual means the own risk and solvency assessment guidance manual prescribed by the director which



conforms substantially to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners. A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the change has been adopted by the director; and

(6) Own risk and solvency assessment summary report means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

**Source:** Laws 2014, LB700, § 4; Laws 2016, LB772, § 16.

#### **44-9005 Risk management framework.**

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement is satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

**Source:** Laws 2014, LB700, § 5.

#### **44-9006 Own risk and solvency assessment.**

Subject to section 44-9008, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the own risk and solvency assessment guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

**Source:** Laws 2014, LB700, § 6.

#### **44-9007 Own risk and solvency assessment summary report; submission; contents; similar report accepted; when.**

(1) Upon the director's request, and no more than once each year, an insurer shall submit to the director an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual applicable to the insurer or the insurance group of which the insurer is a member. Notwithstanding any request from the director, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection if the director is the lead state insurance commissioner of the insurance group.

(2) The report shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the own risk and solvency assessment summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer may comply with subsection (1) of this section by providing the most recent and substantially similar report provided by the insurer or another member of an insurance group of which the insurer is a member to the insurance commissioner of another state or to a supervisor or regulator of a

foreign jurisdiction if that report provides information that is comparable to the information described in the own risk and solvency assessment guidance manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language.

(4) The first filing of the own risk and solvency assessment summary report shall be in 2015.

**Source:** Laws 2014, LB700, § 7.

**44-9008 Act; exemptions; waiver; director; considerations; director; powers.**

(1) An insurer shall be exempt from the requirements of the Risk Management and Own Risk and Solvency Assessment Act if:

(a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than five hundred million dollars; and

(b) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and National Flood Insurance Program, of less than one billion dollars.

(2) If an insurer qualifies for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision (1)(b) of this section, then the own risk and solvency assessment summary report required pursuant to section 44-9007 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one own risk and solvency assessment summary report for any combination of insurers if the combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to subdivision (1)(a) of this section, but the insurance group of which the insurer is a member qualifies for exemption pursuant to subdivision (1)(b) of this section, then the only own risk and solvency assessment summary report required pursuant to section 44-9007 shall be the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to subsection (1) of this section may apply to the director for a waiver from the requirements of the act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the director shall coordinate with the lead state insurance commissioner and with the other domiciliary insurance commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this section:

(a) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report based on unique circumstances, including, but not limited to, the type and volume of business written, owner-

ship and organizational structure, federal agency requests, and international supervisor requests; and

(b) The director may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an own risk and solvency assessment summary report if the insurer has risk-based capital for a company action level event as set forth in section 44-6016, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer as determined by the director.

(6) If an insurer that qualified for an exemption pursuant to subsection (1) of this section no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year after the year the threshold is exceeded to comply with the requirements of the act.

**Source:** Laws 2014, LB700, § 8.

**44-9009 Own risk and solvency assessment summary report; documentation and supporting information.**

(1) An own risk and solvency assessment summary report shall be prepared consistent with the own risk and solvency assessment guidance manual, subject to the requirements of subsection (2) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

(2) The review of the own risk and solvency assessment summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

**Source:** Laws 2014, LB700, § 9.

**44-9010 Confidentiality; director; powers; sharing and use of information; written agreement; contents.**

(1) Documents, materials, or other information, including the own risk and solvency assessment summary report, in the possession or control of the director that are obtained by, created by, or disclosed to the director or any other person under the Risk Management and Own Risk and Solvency Assessment Act, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(2) Neither the director nor any person who received documents, materials, or other own risk and solvency assessment related information through examination or otherwise while acting under the authority of the director or with whom such documents, materials, or other information are shared pursuant to the act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, or other own risk and solvency assessment information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college under section 44-2137.01, with the National Association of Insurance Commissioners, and with any third-party consultants designated by the director, if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other own risk and solvency assessment information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret documents and materials, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college under section 44-2137.01, and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The director shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to the act that:

(a) Specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(b) Specifies that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act remains with the director and that the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the director;

(c) Prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to the act in a permanent data base after the underlying analysis is completed;

(d) Requires prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(e) Requires the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act; and

(f) As part of the retention process, requires a third-party consultant to verify to the director, with notice to the insurer, that it is free of any conflict of interest and that it has internal procedures in place to monitor compliance with any conflicts and to comply with the act's confidentiality standards and requirements. The retention agreement with a third-party consultant shall require prior written consent of the insurer before making public any information provided pursuant to the act as required in subsection (1) of this section.

(5) The sharing of information and documents by the director pursuant to the act shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of the provisions of the act.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other own risk and solvency assessment information shall occur as a result of disclosure of such documents, materials, or other information to the director under this section or as a result of sharing as authorized in the act.

(7) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to the act shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

**Source:** Laws 2014, LB700, § 10.

**44-9011 Failure to file own risk and solvency assessment summary report; penalty.**

Any insurer failing, without just cause, to timely file its own risk and solvency assessment summary report as required in the Risk Management and Own Risk and Solvency Assessment Act shall be required, after notice and hearing, to pay a penalty of not to exceed two hundred dollars for each day's delay. The maximum penalty under this section is ten thousand dollars. The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer. The director shall remit any penalties collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2014, LB700, § 11.

## ARTICLE 91

## CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT

## Section

- 44-9101. Act, how cited.
- 44-9102. Purposes of act.
- 44-9103. Terms, defined.
- 44-9104. Corporate governance annual disclosure; submission to director; review; cross reference to other documents.
- 44-9105. Corporate governance annual disclosure; contents; request for additional information.
- 44-9106. Documents, materials, and other information; proprietary and trade secrets; confidential; use by director; director; powers.
- 44-9107. Review of corporate governance annual disclosure; third-party consultants; National Association of Insurance Commissioners; written agreement; contents.
- 44-9108. Failure to file corporate governance annual disclosure; forfeiture; suspension of certificate of authority.
- 44-9109. Rules and regulations.

**44-9101 Act, how cited.**

Sections 44-9101 to 44-9109 shall be known and may be cited as the Corporate Governance Annual Disclosure Act.

**Source:** Laws 2016, LB772, § 1.

**44-9102 Purposes of act.**

(1) The purposes of the Corporate Governance Annual Disclosure Act are to:

(a) Provide the director a summary of an insurer's or insurance group's corporate governance structure, policies, and practices to permit the director to gain and maintain an understanding of the insurer's or insurance group's corporate governance framework;

(b) Outline the requirements for completing a corporate governance annual disclosure with the director; and

(c) Provide for the confidential treatment of the corporate governance annual disclosure and related information that contains confidential and sensitive information related to an insurer's or insurance group's internal operations and proprietary and trade secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(2) Nothing in the Corporate Governance Annual Disclosure Act shall be construed (a) to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law or (b) to limit the director's authority, or the rights or obligations of third parties, under the Insurers Examination Act.

(3) The requirements of the Corporate Governance Annual Disclosure Act shall apply to all insurers that are domiciled in this state.

**Source:** Laws 2016, LB772, § 2.

## Cross References

Insurers Examination Act, see section 44-5901.

**44-9103 Terms, defined.**

For purposes of the Corporate Governance Annual Disclosure Act:

(1) Corporate governance annual disclosure means a confidential report filed by an insurer or insurance group made in accordance with the requirements of the Corporate Governance Annual Disclosure Act;

(2) Director means the Director of Insurance;

(3) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in section 44-2121; and

(4) Insurer has the same meaning as in section 44-103, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

**Source:** Laws 2016, LB772, § 3.

**44-9104 Corporate governance annual disclosure; submission to director; review; cross reference to other documents.**

(1) An insurer, or the insurance group of which the insurer is a member, shall, no later than June 1 of each calendar year, submit to the director a corporate governance annual disclosure that contains the information described in section 44-9105. Notwithstanding any request from the director made pursuant to subsection (3) of this section, if the insurer is a member of an insurance group, the insurer shall submit the disclosure required by this section to the director of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(2) The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices contained in the corporate governance annual disclosure and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer not required to submit a corporate governance annual disclosure under this section shall do so upon the director's request.

(4) For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk appetite is determined, the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on one of these three criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) The review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(6) Insurers providing information substantially similar to the information required by the Corporate Governance Annual Disclosure Act in other documents provided to the director, including proxy statements filed in conjunction with the requirements of section 44-2132 or other state or federal filings provided to the director, shall not be required to duplicate such information in the corporate governance annual disclosure, but shall only be required to cross reference the document in which such information is included.

**Source:** Laws 2016, LB772, § 4.

**44-9105 Corporate governance annual disclosure; contents; request for additional information.**

The corporate governance annual disclosure shall be prepared in a manner prescribed by the director. The insurer or insurance group shall have discretion over the responses to the corporate governance annual disclosure inquiries, except that the corporate governance annual disclosure shall contain the material information necessary to permit the director to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The director may request additional information that he or she deems material and necessary to provide the director with a clear understanding of the corporate governance policies, reporting or information systems, or controls implementing the corporate governance policies. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

**Source:** Laws 2016, LB772, § 5.

**44-9106 Documents, materials, and other information; proprietary and trade secrets; confidential; use by director; director; powers.**

(1) Documents, materials, or other information, including the corporate governance annual disclosure, in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the director or any other person under the Corporate Governance Annual Disclosure Act are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the director may share or receive confidential documents, materials, or other information related to the corporate governance annual disclosure pursuant to subsection (3) of this section to assist in the performance of the director's regular duties.



(2) Neither the director nor any person who received documents, materials, or other information related to the corporate governance annual disclosure, through examination or otherwise, while acting under the authority of the director, or with whom such documents, materials, or other information are shared pursuant to the Corporate Governance Annual Disclosure Act, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, or other information related to the corporate governance annual disclosure, including the confidential and privileged documents, materials, or other information subject to subsection (1) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 44-2137.01, with the National Association of Insurance Commissioners, and with third-party consultants pursuant to section 44-9107 if the recipient agrees in writing to maintain the confidentiality and privileged status of such documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or other information related to the corporate governance annual disclosure, including otherwise confidential and privileged documents, materials, or other information, including proprietary and trade secret documents and materials, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in section 44-2137.01 and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(4) The sharing of information and documents by the director pursuant to the Corporate Governance Annual Disclosure Act shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of the provisions of the act.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information related to the corporate governance annual disclosure shall occur as a result of disclosure of such documents, materials, or other information to the director under this section or as a result of sharing as authorized in the Corporate Governance Annual Disclosure Act.

**Source:** Laws 2016, LB772, § 6.

**44-9107 Review of corporate governance annual disclosure; third-party consultants; National Association of Insurance Commissioners; written agreement; contents.**

(1) The director may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff, as may be reasonably necessary to assist the director in reviewing the corporate governance annual disclosure and related informa-

tion or the insurer's compliance with the Corporate Governance Annual Disclosure Act.

(2) Any persons retained under subsection (1) of this section shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) The National Association of Insurance Commissioners and third-party consultants shall be subject to the same confidentiality standards and requirements as the director.

(4) As part of the retention process, a third-party consultant shall verify to the director, with notice to the insurer, that the third-party consultant is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict of interest and to comply with the confidentiality standards and requirements of the Corporate Governance Annual Disclosure Act.

(5) A written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to the Corporate Governance Annual Disclosure Act shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under the act:

(a) Specific procedures and protocols for maintaining the confidentiality and security of information related to the corporate governance annual disclosure that is shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the act;

(b) Procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information related to the corporate governance annual disclosure and has verified in writing the legal authority to maintain confidentiality.

(c) A provision specifying that (i) ownership of the information related to the corporate governance annual disclosure that is shared with the National Association of Insurance Commissioners or a third-party consultant remains with the Department of Insurance and (ii) the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the director;

(d) A provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to the Corporate Governance Annual Disclosure Act in a permanent data base after the underlying analysis is completed;

(e) A provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's or insurance group's information related to the corporate governance annual disclosure; and

(f) A requirement that the National Association of Insurance Commissioners or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential

information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to the Corporate Governance Annual Disclosure Act.

**Source:** Laws 2016, LB772, § 7.

**44-9108 Failure to file corporate governance annual disclosure; forfeiture; suspension of certificate of authority.**

Any insurer failing, without just cause, to timely file the corporate governance annual disclosure as required in the Corporate Governance Annual Disclosure Act shall forfeit fifty dollars each day thereafter such failure continues. The maximum forfeit shall not exceed ten thousand dollars. In addition to the forfeiture, the director may suspend, after notice and hearing, the certificate of authority of the insurer until it has complied with the act. The director may reduce the forfeiture if the insurer demonstrates to the director that the forfeiture would constitute a financial hardship to the insurer. The director shall remit any forfeiture collected pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2016, LB772, § 8.

**44-9109 Rules and regulations.**

The director may adopt and promulgate rules and regulations to carry out the Corporate Governance Annual Disclosure Act.

**Source:** Laws 2016, LB772, § 9.

## ARTICLE 92

### PUBLIC ADJUSTERS LICENSING ACT

#### Section

- 44-9201. Act, how cited.
- 44-9202. Purpose of act.
- 44-9203. Terms, defined.
- 44-9204. License required; exceptions.
- 44-9205. Resident public adjuster license; application; qualifications; fee; examination.
- 44-9206. Nonresident public adjuster license; application; qualifications; fee; director; verify status; termination of license; when.
- 44-9207. Business entity acting as public adjuster; license; application; qualifications; fee; director; powers.
- 44-9208. Examination; fee.
- 44-9209. Exemption from examination.
- 44-9210. Individual; issuance of license; expiration; renewal; fee; lapsed license; reinstatement; business entity; license; expiration; renewal; fee; lapsed license; reinstatement; license; contents; licensee; duties; director; powers; renewal procedures.
- 44-9211. Director; powers; nonrenewal or denial of application; notice; hearing; administrative fine; director; enforce act.
- 44-9212. Financial responsibility; surety bond; director; powers.
- 44-9213. Continuing education.
- 44-9214. Contracts; contents; prohibited terms; separate disclosure document; public adjuster; duties; written notice of rights; right to rescind.
- 44-9215. Escrow account.
- 44-9216. Records; contents; retention; inspection.
- 44-9217. Public adjuster; loyalty; prohibited acts.
- 44-9218. Fee; catastrophic fees.
- 44-9219. Rules and regulations.

**44-9201 Act, how cited.**

Sections 44-9201 to 44-9219 shall be known and may be cited as the Public Adjusters Licensing Act.

**Source:** Laws 2018, LB743, § 1.  
Effective date July 19, 2018.

**44-9202 Purpose of act.**

The purpose of the Public Adjusters Licensing Act is to govern the qualifications and procedures for licensing public adjusters in this state and to specify the duties of and restrictions on public adjusters, including limitation of such licensure to assisting only insureds with first-party claims.

**Source:** Laws 2018, LB743, § 2.  
Effective date July 19, 2018.

**44-9203 Terms, defined.**

As used in the Public Adjusters Licensing Act, unless the context otherwise requires:

(1) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or any other legal entity;

(2) Catastrophic disaster means an event declared to be a catastrophic disaster by the President of the United States or the governor of the state in which the disaster occurred that (a) results in large numbers of deaths and injuries, (b) causes extensive damage or destruction of facilities that provide and sustain human needs, (c) produces an overwhelming demand on state and local response resources and mechanisms, (d) causes a severe long-term effect on general economic activity, and (e) severely affects state, local, and private sector capabilities to begin and sustain response activities;

(3) Department means the Department of Insurance;

(4) Director means the Director of Insurance;

(5) Home state means the District of Columbia or any state or territory of the United States in which the principal place of residence or principal place of business of the public adjuster is located;

(6) Individual means a natural person;

(7) Insured means a person insured under the insurance policy against which the claim is made;

(8) Person means an individual or a business entity;

(9) Public adjuster means any person who, for compensation, does any of the following:

(a) Acts for or aids an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured;

(b) Advertises for employment as a public adjuster of first-party claims or otherwise solicits business or represents to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured; or

(c) Directly or indirectly solicits the business of investigating or adjusting losses or of advising an insured about first-party claims for loss or damage to real or personal property of the insured;

(10) Uniform business entity application means the uniform business entity application prescribed by the director which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the National Association of Insurance Commissioners; and

(11) Uniform individual application means the uniform individual application prescribed by the director which conforms substantially to the uniform application for individual adjuster licensing adopted by the National Association of Insurance Commissioners.

**Source:** Laws 2018, LB743, § 3.  
Effective date July 19, 2018.

#### **44-9204 License required; exceptions.**

(1) A person shall not operate as or represent that such person is a public adjuster in this state unless such person is licensed as a public adjuster in accordance with the Public Adjusters Licensing Act.

(2) A public adjuster shall not misrepresent to any insured that such public adjuster is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on behalf of the insurer for that specific claim or purpose. A public adjuster is prohibited from charging any insured a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

(3) A public adjuster shall not, directly or indirectly, solicit, or enter into, an agreement for the repair or replacement of damaged property on which such public adjuster has engaged to adjust or settle claims for losses or damages of the insured.

(4) Notwithstanding subsection (1) of this section, licensing as a public adjuster shall not be required for:

(a) An attorney admitted to practice in this state, when acting in the attorney's professional capacity as an attorney;

(b) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(c) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including, but not limited to, a photographer, estimator, private investigator, engineer, or handwriting expert;

(d) A licensed health care provider, or an employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(e) A person who settles subrogation claims between insurers.

**Source:** Laws 2018, LB743, § 4.  
Effective date July 19, 2018.

#### **44-9205 Resident public adjuster license; application; qualifications; fee; examination.**

An individual applying for a resident public adjuster license shall make application to the director on the uniform individual application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of such individual's knowledge and belief. Before approving an application for a resident public adjuster license, the director shall find that such individual:

(1) Is at least eighteen years of age. Notwithstanding the provisions of section 43-2101, if an individual is issued a license pursuant to the Public Adjusters Licensing Act, his or her minority ends;

(2) Has his or her principal place of residence or principal place of business in this state;

(3) Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 44-9211;

(4) Has paid the resident licensing fee, not to exceed one hundred dollars, prescribed by the director;

(5) Except as otherwise provided under the act, has passed the examinations required by section 44-9208;

(6) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the director;

(7) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in section 44-9212; and

(8) Maintains an office in this state with public access to such office by reasonable appointment or regular business hours.

**Source:** Laws 2018, LB743, § 5.

Effective date July 19, 2018.

**44-9206 Nonresident public adjuster license; application; qualifications; fee; director; verify status; termination of license; when.**

(1) An individual applying for a nonresident public adjuster license shall make application to the director in the manner prescribed by the director and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of such individual's knowledge and belief. Before approving an application for a nonresident public adjuster license, the director shall find that the applicant:

(a) Is licensed as a resident public adjuster and in good standing in such individual's home state and that such home state awards nonresident public adjuster licenses to residents of this state on the same basis as provided for in the Public Adjusters Licensing Act; and

(b) Has paid the nonresident licensing fee, not to exceed one hundred dollars, prescribed by the director.

(2) The director may verify the licensing status of a nonresident public adjuster through the producer data base maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(3) As a condition to continuation of a nonresident public adjuster license, a licensed nonresident public adjuster shall maintain a resident public adjuster license in good standing in his or her home state.

(4) A nonresident public adjuster license issued pursuant to this section shall terminate and be surrendered immediately to the director if the home state

public adjuster license terminates for any reason, unless the individual has been issued a license as a resident public adjuster in a new home state and such new home state has reciprocity with this state. A licensed nonresident public adjuster shall notify the director of any change to a new home state as soon as possible, but no later than thirty days after receiving a license as a resident public adjuster from the new home state. The nonresident public adjuster shall include both the new and the old addresses in the notice to the director.

**Source:** Laws 2018, LB743, § 6.  
Effective date July 19, 2018.

**44-9207 Business entity acting as public adjuster; license; application; qualifications; fee; director; powers.**

(1) A business entity acting as a public adjuster in this state is required to obtain a public adjuster license and shall make application to the director on the uniform business entity application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the knowledge and belief of such entity. Before approving an application for a business entity public adjuster license, the director shall find that the applicant:

(a) Has paid the business entity licensing fee, not to exceed one hundred fifty dollars, prescribed by the director; and

(b) Has designated a resident public adjuster or a nonresident public adjuster licensed pursuant to the Public Adjusters Licensing Act to be responsible for compliance with the insurance laws, rules, and regulations of this state for such business entity.

(2) The director may require any documents reasonably necessary to verify the information contained in any application submitted pursuant to this section.

**Source:** Laws 2018, LB743, § 7.  
Effective date July 19, 2018.

**44-9208 Examination; fee.**

(1) An individual applying for a resident public adjuster license shall pass a written examination, unless exempt pursuant to section 44-9209. Such examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state and shall be conducted as prescribed by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering the written examination required pursuant to subsection (1) of this section and collecting a fee prescribed by the director. The fee shall not exceed one hundred dollars.

**Source:** Laws 2018, LB743, § 8.  
Effective date July 19, 2018.

**44-9209 Exemption from examination.**

(1) An individual who moves to this state, was previously licensed as a public adjuster in another state based on a public adjuster examination, and applies for a resident public adjuster license in this state within ninety days of establishing legal residence shall not be required to pass an examination pursuant to section 44-9208 in this state if:

(a) Such individual is currently licensed in the other state or if an application for a resident public adjuster license is received within twelve months of the cancellation of his or her previous license; and

(b) The other state issues a certification that such individual is licensed and in good standing in that state or was licensed and in good standing at the time of cancellation.

(2) An individual who applies for a resident public adjuster license and who was previously licensed as either a resident public adjuster or a nonresident public adjuster in this state shall not be required to complete an examination if the application is received within twelve months of the termination of such previous license in this state and if, at the time of such termination, the applicant was in good standing in this state.

**Source:** Laws 2018, LB743, § 9.

Effective date July 19, 2018.

**44-9210 Individual; issuance of license; expiration; renewal; fee; lapsed license; reinstatement; business entity; license; expiration; renewal; fee; lapsed license; reinstatement; license; contents; licensee; duties; director; powers; renewal procedures.**

(1)(a) An individual who meets the requirements for a resident public adjuster license shall be issued such license. An individual who meets the requirements for a nonresident public adjuster license shall be issued such license.

(b) Each resident public adjuster license and each nonresident public adjuster license shall expire on the last day of the month of such public adjuster's birthday in the first year after issuance of such license in which his or her age is divisible by two.

(c) Each resident public adjuster license and each nonresident public adjuster license may be renewed within the ninety-day period immediately preceding the expiration date upon payment of the renewal fee, not to exceed one hundred dollars, prescribed by the director. A resident public adjuster or nonresident public adjuster who allows his or her license to lapse may, within the twelve-month period immediately following the expiration date, reinstate the same license without the necessity of passing a written examination upon payment of a reinstatement fee, not to exceed one hundred twenty-five dollars, prescribed by the director in addition to the renewal fee.

(d) The director may grant an individual licensee who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(2)(a) A business entity that has met the requirements of the Public Adjusters Licensing Act shall be issued a business entity public adjuster license.

(b) Each business entity public adjuster license shall expire on April 30 of each year.

(c) A business entity public adjuster license may be renewed within the ninety-day period immediately preceding the expiration date upon payment of the renewal fee, not to exceed one hundred fifty dollars, prescribed by the director. A business entity public adjuster that allows its license to lapse may, within the thirty-day period immediately following the expiration date, renew



the same license upon payment of a late renewal fee, not to exceed one hundred twenty-five dollars, prescribed by the director in addition to the renewal fee.

(d) Any business entity public adjuster license renewed within the thirty-day period immediately following the expiration date pursuant to this subsection shall be deemed to have been renewed before the expiration date.

(3)(a) Each license issued pursuant to the Public Adjusters Licensing Act shall contain the licensee's name, address, and license number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(b) Each licensee shall inform the director, by any means acceptable to the director, of any change of legal name, address, or other information submitted on the application within thirty days after the change. Any licensee failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the license until the change is reported to the director, or both.

(c) Each licensee doing business under any name other than the licensee's legal name shall notify the director prior to using the assumed name.

(d) Each licensee shall be subject to the Unfair Insurance Trade Practices Act and the Unfair Insurance Claims Settlement Practices Act.

(e) Each licensee shall report to the director any administrative action taken against such licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(f) Each licensee shall report to the director any criminal prosecution of such licensee taken in any jurisdiction within thirty days of arraignment. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

(4) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to perform any ministerial functions, including the collection of fees, related to the administration of the Public Adjusters Licensing Act.

(5) The director may establish license renewal procedures by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

**Source:** Laws 2018, LB743, § 10.

Effective date July 19, 2018.

#### Cross References

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

**Unfair Insurance Claims Settlement Practices Act**, see section 44-1536.

**Unfair Insurance Trade Practices Act**, see section 44-1521.

**44-9211 Director; powers; nonrenewal or denial of application; notice; hearing; administrative fine; director; enforce act.**

(1) The director may suspend, revoke, or refuse to issue or renew a resident public adjuster license, nonresident public adjuster license, or business entity public adjuster license or may levy an administrative fine in accordance with

subsection (4) of this section, or any combination of such actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony or a Class I, II, or III misdemeanor;

(g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or any fraud;

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere or failing to comply with section 44-9217;

(i) Having an insurance or public adjuster license, or the equivalent thereof, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from an individual who is not licensed;

(m) Failing to comply with an administrative or court order imposing a child support obligation pursuant to the License Suspension Act;

(n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; or

(o) Failing to maintain in good standing a resident license in the public adjuster's home state.

(2) If the director does not renew or denies an application for a public adjuster license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days and shall be held pursuant to the Administrative Procedure Act.

(3) A business entity public adjuster license may be suspended, revoked, or refused if the director finds, after notice and hearing, that a violation committed by an individual licensee providing services through the business entity was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the Public Adjusters Licensing Act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to this subsection.

(5) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Public Adjusters Licensing Act against any person who is under investigation for or charged with a violation of the act even if the person's license or registration has been surrendered or has lapsed by operation of law. No disciplinary proceeding shall be instituted against any licensed person after the expiration of three years from the termination of such license.

**Source:** Laws 2018, LB743, § 11.  
Effective date July 19, 2018.

#### Cross References

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

**License Suspension Act**, see section 43-3301.

### **44-9212 Financial responsibility; surety bond; director; powers.**

(1) Prior to the issuance of a resident public adjuster license or a nonresident public adjuster license and for the duration of such license, an applicant shall secure evidence of financial responsibility in a format prescribed by the director through a surety bond. The surety bond shall be executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

(a) Shall be in the minimum amount of twenty thousand dollars; and

(b) Shall not be terminated unless written notice has been filed with the director and submitted to such public adjuster at least thirty days prior to such termination.

(2) The director may request the evidence of financial responsibility at any time the director deems relevant.

(3) A public adjuster shall immediately notify the director if evidence of financial responsibility terminates or becomes impaired. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

**Source:** Laws 2018, LB743, § 12.  
Effective date July 19, 2018.

### **44-9213 Continuing education.**

(1) Except as otherwise provided in this section, an individual who holds a resident public adjuster license or a nonresident public adjuster license shall satisfactorily complete a minimum of twenty-four credits of continuing education, including three credits of ethics, reported on a biennial basis in conjunction with the license renewal cycle.

(2) The requirements of subsection (1) of this section shall not apply to a nonresident public adjuster who has met the continuing education require-

ments of the adjuster's home state and whose home state gives credit to residents of this state on the same basis.

(3) Only continuing education activities approved by the director pursuant to sections 44-3901 to 44-3908 shall be used to satisfy the requirements of this section.

**Source:** Laws 2018, LB743, § 13.  
Effective date July 19, 2018.

**44-9214 Contracts; contents; prohibited terms; separate disclosure document; public adjuster; duties; written notice of rights; right to rescind.**

(1) Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

(a) Legible full name of the public adjuster signing the contract, as specified in director records;

(b) Home state, business address, and telephone number;

(c) Public adjuster license number;

(d) Title of "Public Adjuster Contract";

(e) Insured's full name, street address, insurer name, and insurance policy number, if known or upon notification;

(f) Description of the loss and its location, if applicable;

(g) Description of services to be provided to the insured;

(h) Signatures of the public adjuster and the insured;

(i) Date contract was signed by the public adjuster and date the contract was signed by the insured;

(j) Attestation language stating that the public adjuster is fully bonded pursuant to state law; and

(k) The specific amount of compensation, including, but not limited to, the full salary, fee, commission, or other consideration the public adjuster is to receive for services.

(2)(a) The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

(b) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

(c) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type and the dollar estimates shall be set forth in the contract. Any additional expenses shall be approved in writing by the insured.

(d) Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the director.

(3) If the insurer, not later than seventy-two hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(a) Not receive a commission that consists of a percentage of the total amount paid by an insurer to resolve a claim;

(b) Inform the insured that the loss recovery amount might not be increased by the insurer; and

(c) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(4) A public adjuster contract may not contain any contract term that:

(a) Allows a percentage fee to be collected by the public adjuster when money is due from an insurer, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer;

(b) Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;

(c) Imposes collection costs or late fees; or

(d) Precludes a public adjuster from pursuing civil remedies.

(5) Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(a) Property insurance policies obligate the insured to present a claim to his or her insurer for consideration;

(b) There are three types of adjusters that could be involved in the claim process. The definitions of the three types are as follows:

(i) Company adjuster means an insurance adjuster who is an employee of an insurer. He or she represents the interest of the insurer, is paid by the insurer, and will not charge the insured a fee;

(ii) Independent adjuster means an insurance adjuster who is hired on a contract basis by an insurer to represent the interest of the insurer in the settlement of the claim. He or she is paid by the insurer and will not charge the insured a fee; and

(iii) Public adjuster means an insurance adjuster who does not work for any insurer. He or she works for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires a public adjuster by signing a contract agreeing to pay a fee or commission based on a percentage of the settlement or other method of compensation;

(c) The insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so;

(d) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim;

(e) The public adjuster is not a representative or employee of the insurer; and

(f) The salary, fee, commission, or other consideration to be paid to a public adjuster is the obligation of the insured, not the insurer.

(6) The contract shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The original contract retained by the public adjuster shall be available at all times for inspection without notice by the department.

(7) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(8) The public adjuster shall give the insured written notice of the insured's rights as provided in this section.

(9) The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three-business-day period.

(10) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen days following the receipt by the public adjuster of the rescission notice.

(11) The director may require a public adjuster to file a contract with the department in a manner prescribed by the director.

**Source:** Laws 2018, LB743, § 14.

Effective date July 19, 2018.

#### **44-9215 Escrow account.**

A public adjuster who receives, accepts, or holds, on behalf of an insured, any funds toward the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow account in a financial institution that is insured by an agency of the federal government in the home state of such public adjuster or the state where the loss occurred.

**Source:** Laws 2018, LB743, § 15.

Effective date July 19, 2018.

#### **44-9216 Records; contents; retention; inspection.**

(1) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

- (a) The name of the insured;
- (b) The date, location, and amount of the loss;
- (c) A copy of the contract between the public adjuster and the insured;
- (d) The name of the insurer, amount, expiration date, and policy number for each policy carried with respect to the loss;
- (e) An itemized statement of the amount recovered for the insured;
- (f) An itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;
- (g) A register of all money received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts;
- (h) The name of the public adjuster who executed the contract;
- (i) The name of the attorney representing the insured, if applicable, and the name of the claims representative of the insurer; and
- (j) Evidence of financial responsibility in a format prescribed by the director.

(2) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the department at all times.

(3) Records submitted to the department in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the department.

**Source:** Laws 2018, LB743, § 16.  
Effective date July 19, 2018.

**44-9217 Public adjuster; loyalty; prohibited acts.**

(1) A public adjuster shall serve with objectivity and complete loyalty to the interest of the insured and shall, in good faith, render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion of such public adjuster will best serve the insurance claim needs and interest of the insured.

(2) A public adjuster shall not solicit, nor attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(3) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under the Public Adjusters Licensing Act.

(4) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured. Direct or indirect financial interest includes, but is not limited to, ownership of, employment by, or other consideration received from any business entity or individual that performs any work pertaining to damage related to the insured loss.

(5) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer.

(6) A public adjuster shall abstain from referring or directing the insured to obtain needed repairs or services in connection with a loss from any person:

(a) With whom the public adjuster has a direct or indirect financial interest; or

(b) From whom the public adjuster may receive direct or indirect compensation or other consideration for the referral.

(7) A public adjuster shall not undertake the adjustment of any claim if such public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage or if the loss or coverage otherwise exceeds the current expertise of the public adjuster.

(8) A public adjuster shall not knowingly make any false oral or written material statements regarding any person engaged in the business of insurance to any insured client or potential insured client.

(9) A public adjuster, while so licensed pursuant to the Public Adjusters Licensing Act, shall not represent or act as a company adjuster or independent adjuster in any circumstance.

(10) A public adjuster shall not enter into a contract or accept a power of attorney that vests in such public adjuster the effective authority to choose the persons who shall perform repair work.

(11) A public adjuster shall not agree to any loss settlement without the knowledge and consent of the insured.

**Source:** Laws 2018, LB743, § 17.  
Effective date July 19, 2018.

**44-9218 Fee; catastrophic fees.**

(1) A public adjuster may charge the insured a reasonable fee for public adjuster services.

(2) A person shall not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under the Public Adjusters Licensing Act and is not so licensed.

(3) In the event of a catastrophic disaster, there shall be limits on catastrophic fees. No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to or more than ten percent of any insurance settlement or proceeds resulting from a catastrophic disaster.

(4) No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value prior to settlement of a claim unless the loss is being handled by the public adjuster on a time-plus-expense basis.

**Source:** Laws 2018, LB743, § 18.  
Effective date July 19, 2018.

**44-9219 Rules and regulations.**

The director may adopt and promulgate rules and regulations to carry out the Public Adjusters Licensing Act.

**Source:** Laws 2018, LB743, § 19.  
Effective date July 19, 2018.



## CHAPTER 45

### INTEREST, LOANS, AND DEBT

#### Article.

1. Interest Rates and Loans.
  - (f) Loan Brokers. 45-189 to 45-191.10.
3. Installment Sales. 45-334 to 45-356.
6. Collection Agencies. 45-621.
7. Residential Mortgage Licensing. 45-701 to 45-742.01.
8. Credit Services Organizations. 45-804.
9. Delayed Deposit Services Licensing Act. 45-901 to 45-931.
10. Nebraska Installment Loan Act. 45-1001 to 45-1070.
11. Guaranteed Asset Protection Waiver Act. 45-1103.
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#### ARTICLE 1

#### INTEREST RATES AND LOANS

##### (f) LOAN BROKERS

#### Section

- 45-189. Loan brokers; legislative findings.
- 45-190. Terms, defined.
- 45-191.01. Loan brokerage agreement; written disclosure statement; requirements.
- 45-191.04. Loan brokerage agreement; requirements; right to cancel.
- 45-191.10. Persons exempt.

##### (f) LOAN BROKERS

#### **45-189 Loan brokers; legislative findings.**

The Legislature finds that:

(1) Many professional groups are presently licensed or otherwise regulated by the State of Nebraska in the interest of public protection;

(2) Certain questionable business practices, such as the collection of an advance fee prior to the performance of the service, misleads the public;

(3) Such practices are avoided by many professional groups and many professional groups are regulated by the state to restrict practices which tend to mislead or deceive the public;

(4) Loan brokers in Nebraska have engaged in the practice of collecting an advance fee from borrowers in consideration for attempting to procure a loan of money;

(5) Such practice, as well as others, by loan brokers has led the public to believe that the loan broker has agreed to procure a loan for the borrower when in fact the loan broker has merely promised to attempt to procure a loan; and

(6) Regulation of loan brokers by the state, in similar fashion to that of other professions, is necessary in order to protect the public welfare and to promote the use of fair and equitable business practices.

**Source:** Laws 1981, LB 154, § 1; Laws 2011, LB75, § 2.

**45-190 Terms, defined.**

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

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

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

(5)(a) Loan broker means any person who:

(i) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(ii) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;

(iii) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(iv) Holds himself or herself out, through advertising, signs, or other means, as a loan broker; and

(b) Loan broker does not include: (i) A bank, bank holding company, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or an installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

**Source:** Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16; Laws 2011, LB75, § 3; Laws 2013, LB279, § 1; Laws 2017, LB184, § 1.

**45-191.01 Loan brokerage agreement; written disclosure statement; requirements.**

(1) Prior to a borrower signing a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital

letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker, if any;

(b) A statement as to whether the loan broker does business as an individual, a partnership, a corporation, or another organizational form, including identification of the state of incorporation or formation;

(c) How long the loan broker has done business;

(d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;

(e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;

(f) A description of the services the loan broker agrees to perform for the borrower;

(g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;

(h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;

(i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:

(i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

**Source:** Laws 1993, LB 270, § 3; Laws 2007, LB124, § 29; Laws 2017, LB184, § 2.

**45-191.04 Loan brokerage agreement; requirements; right to cancel.**

(1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within five business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower’s right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

(a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker’s principal business address, telephone number, and electronic mail and Internet address, if any, and the name, address, telephone number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower’s right to cancel the loan brokerage agreement pursuant to this section:

“You have five business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The five business days shall expire on ..... (last date to mail or deliver notice), and notice of cancellation should be mailed to ..... (loan broker’s name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and post-marked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement.”

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

**Source:** Laws 1993, LB 270, § 6; Laws 2001, LB 53, § 89; Laws 2007, LB124, § 30; Laws 2017, LB184, § 3.

**45-191.10 Persons exempt.**

The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

**Source:** Laws 1993, LB 270, § 12; Laws 1995, LB 599, § 12; Laws 2013, LB279, § 2.

**ARTICLE 3**  
**INSTALLMENT SALES**

Section	
45-334.	Act, how cited.
45-335.	Terms, defined.
45-336.	Installment contract; requirements.
45-345.	License; requirement; exception.
45-346.	License; application; issuance; bond; fee; term; director; duties.
45-346.01.	Licensee; move of place of business; maintain minimum net worth; bond.
45-348.	License; renewal; licensee; duties; fee; voluntary surrender of license.
45-351.	Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.
45-354.	Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.
45-355.	Nationwide Mortgage Licensing System and Registry; information sharing; director; powers.
45-356.	Acquisition of licensee; notice; filing fee; director; duties; disapproval; grounds; notice; hearing.

**45-334 Act, how cited.**

Sections 45-334 to 45-356 shall be known and may be cited as the Nebraska Installment Sales Act.

**Source:** Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31; Laws 2012, LB965, § 1; Laws 2016, LB778, § 3.

**45-335 Terms, defined.**

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

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

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

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

(14) Financial institution has the same meaning as in section 8-101.03;

(15) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(16) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to

suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(17) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(18) Licensee means any person who obtains a license under the Nebraska Installment Sales Act;

(19) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity;

(20) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(21) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries; and

(22)(a) Control in the case of a corporation means (i) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (ii) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy.

(b) Control in the case of any other entity means (i) the power, directly or indirectly, to direct the management or policies of the entity, (ii) the contribution of twenty-five percent or more of the capital of the entity, or (iii) the right to receive, upon dissolution, twenty-five percent or more of the capital of the entity.

**Source:** Laws 1965, c. 266, § 1, p. 751; Laws 1965, c. 268, § 2, p. 757; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8; Laws 2011, LB77, § 1; Laws 2012, LB965, § 2; Laws 2016, LB778, § 4; Laws 2017, LB140, § 153.

#### Cross References

**Consumer Rental Purchase Agreement Act**, see section 69-2101.

**Guaranteed Asset Protection Waiver Act**, see section 45-1101.

### 45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed,

except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee, such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the amount included for electronic title and lien services other than fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction; (g) the basic time price, which is the sum of subdivisions (c), (d), (e), and (f) of this subsection; (h) the time-price differential; (i) the amount of the time-price balance, which is the sum of subdivisions (g) and (h) of this subsection, payable in installments by the buyer to the seller; (j) the number, amount, and due date or period of each installment; (k) the time-sales price; and (l) the amount included for a guaranteed asset protection waiver.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.



(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

**Source:** Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26; Laws 2010, LB571, § 9; Laws 2011, LB77, § 2.

#### **45-345 License; requirement; exception.**

(1) No person shall act as a sales finance company in this state without obtaining a license therefor from the department as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state, unless such person meets the requirements of section 45-340.

(2) No financial institution or installment loan licensee authorized to do business in this state shall be required to obtain a license under the act but shall comply with all of the other provisions of the act.

(3) A seller who does not otherwise act as a sales finance company shall not be required to obtain a license under the act but shall comply with all of the other provisions of the act in order to charge the time-price differential allowed by section 45-338.

**Source:** Laws 1965, c. 268, § 12, p. 763; Laws 1973, LB 39, § 4; Laws 1996, LB 1053, § 10; Laws 2003, LB 131, § 28; Laws 2003, LB 217, § 36; Laws 2012, LB965, § 3.

#### **45-346 License; application; issuance; bond; fee; term; director; duties.**

(1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

(5) An initial license shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

(8) If an applicant for a license under the act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

**Source:** Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34; Laws 2012, LB965, § 4; Laws 2016, LB778, § 5; Laws 2017, LB185, § 2.

**45-346.01 Licensee; move of place of business; maintain minimum net worth; bond.**

(1) A licensee may move its place of business from one place to another without obtaining a new license if the licensee gives written notice thereof to the director at least thirty days prior to such move.

(2) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department

may issue a notice of cancellation of the license in lieu of revocation proceedings.

**Source:** Laws 2007, LB124, § 35; Laws 2009, LB327, § 17; Laws 2012, LB965, § 5.

**45-348 License; renewal; licensee; duties; fee; voluntary surrender of license.**

(1) An installment sales license may be renewed annually on or before December 31 by paying to the director a fee of one hundred fifty dollars for each license held as a license fee for the succeeding year and any processing fee allowed under subsection (2) of section 45-354 and by submitting such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The department shall issue a notice of cancellation of the license following such surrender.

(3) If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

**Source:** Laws 1965, c. 268, § 15, p. 765; Laws 2005, LB 533, § 48; Laws 2009, LB327, § 18; Laws 2012, LB965, § 6; Laws 2016, LB778, § 6.

**45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.**

(1) The department shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and

intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. The department shall remit fines collected under this subsection to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

**Source:** Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37; Laws 2012, LB965, § 7.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **45-354 Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; duties; department; duties.**

(1) Effective January 1, 2013, or within one hundred eighty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting licenses issued under the Nebraska Installment Sales Act, whichever is later, the department shall require such licensees under the act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

- (i) Criminal history through fingerprint or other data bases;
- (ii) Civil or administrative records;
- (iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with precensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Sales Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-355.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

**Source:** Laws 2012, LB965, § 8.

**45-355 Nationwide Mortgage Licensing System and Registry; information sharing; director; powers.**

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

**Source:** Laws 2012, LB965, § 9.

**45-356 Acquisition of licensee; notice; filing fee; director; duties; disapproval; grounds; notice; hearing.**

(1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Installment Sales Act without first (a) giving thirty days' notice to the department on a form prescribed by the department of such proposed acquisition and (b) paying a filing fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354.

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

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

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

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

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired installment sales licensee would not be operated honestly, fairly, or efficiently within the purpose of the Nebraska Installment Sales Act; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

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

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may make a written request for a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the Administrative Procedure Act. The director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

**Source:** Laws 2016, LB778, § 7.

**Cross References**

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

## ARTICLE 6 COLLECTION AGENCIES

Section

45-621. Nebraska Collection Agency Fund; created; use; investment; transfer.

**45-621 Nebraska Collection Agency Fund; created; use; investment; transfer.**

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the Election Administration Fund or the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency 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) On or before July 5, 2013, the State Treasurer shall transfer one hundred thousand dollars from the Nebraska Collection Agency Fund to the Election Administration Fund.

**Source:** Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws 1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3; Laws 2013, LB199, § 21.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

## ARTICLE 7 RESIDENTIAL MORTGAGE LICENSING

Section

45-701. Act, how cited.

## Section

- 45-702. Terms, defined.
- 45-703. Act; exemptions.
- 45-703.01. Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.
- 45-706. License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.
- 45-727. Mortgage loan originator; license required; loan processor or underwriter; license required.
- 45-729. Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.
- 45-731. Written test requirement; subject areas.
- 45-734. Mortgage loan originator license; inactive status; duration; renewal; reactivation.
- 45-736. Unique identifier; use.
- 45-737. Mortgage banker; licensee; duties.
- 45-737.01. Mortgage loan originator; licensee; duties.
- 45-741. Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.
- 45-742. License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.
- 45-742.01. Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.

**45-701 Act, how cited.**

Sections 45-701 to 45-754 shall be known and may be cited as the Residential Mortgage Licensing Act.

**Source:** Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40; Laws 2009, LB328, § 3; Laws 2010, LB892, § 3; Laws 2012, LB965, § 10; Laws 2013, LB290, § 1.

**45-702 Terms, defined.**

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does



not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

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

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

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

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Purchase-money mortgage means a mortgage issued to the borrower by the seller of the property as part of the purchase transaction;

(22) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(23) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(24) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(25) Registrant means a person registered pursuant to section 45-704;

(26) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(27) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(28) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 45-702.01;

(29) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

(30) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(31) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

**Source:** Laws 1989, LB 272, § 5; Laws 1993, LB 121, § 274; Laws 1993, LB 217, § 1; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41; Laws 2008, LB851, § 19; Laws 2009, LB328, § 4; Laws 2010, LB892, § 4; Laws 2012, LB965, § 11.

#### Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.

Nebraska Installment Loan Act, see section 45-1001.

#### 45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Residential Mortgage Licensing Act:

- (a) Any depository institution or wholly owned subsidiary thereof;
- (b) Any registered bank holding company;
- (c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;
- (d) Any person licensed to practice law in this state in connection with activities that are (i) considered the practice of law by the Supreme Court, (ii) carried out within an attorney-client relationship, and (iii) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards;
- (e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;
- (f) Any registered mortgage loan originator when acting for an entity described in subdivision (24)(a)(i), (ii), or (iii) of section 45-702;
- (g) Any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;
- (h) Any trust company chartered pursuant to the Nebraska Trust Company Act;
- (i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;
- (j) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (k) Any individual who does not repetitively and habitually engage in the business of a mortgage banker, a mortgage loan originator, or a loan processor or underwriter, either inside or outside of this state, who (i) makes a residential mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of a dwelling or residential real estate owned by such individual without the intent to resell the residential mortgage loan;
- (l) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter;
- (m) The United States of America; the State of Nebraska; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency or division of any of the foregoing;
- (n) The Nebraska Investment Finance Authority;
- (o) Any individual who is an employee of an entity described in subdivision (m) or (n) of this subsection and who acts as a mortgage loan originator or loan

processor or underwriter only pursuant to his or her official duties as an employee of such entity;

(p) A bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01; and

(q) Any employee of a bona fide nonprofit organization which has received a certificate of exemption pursuant to section 45-703.01 if such employee acts as a mortgage loan originator or mortgage loan processor or underwriter (i) only with respect to his or her work duties for the nonprofit organization and (ii) only with respect to residential mortgage loans with terms that are favorable to the borrower.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the Residential Mortgage Licensing Act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

**Source:** Laws 1989, LB 272, § 6; Laws 1999, LB 396, § 31; Laws 2002, LB 957, § 22; Laws 2005, LB 533, § 50; Laws 2008, LB851, § 20; Laws 2009, LB328, § 5; Laws 2012, LB965, § 12.

#### Cross References

Nebraska Installment Sales Act, see section 45-334.

Nebraska Trust Company Act, see section 8-201.01.

### **45-703.01 Nonprofit organization; certificate of exemption; qualification; application; denial; notice; appeal; department; powers; revocation of certificate; grounds.**

(1) A nonprofit organization may apply to the director for a certificate of exemption on a form as prescribed by the department. The director shall grant such certificate if the director finds that the nonprofit organization is a bona fide nonprofit organization. In order for a nonprofit organization to qualify as a bona fide nonprofit organization, the director shall find that it meets the following:

(a) Has the status of a tax exempt organization under section 501(c) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides homeownership education or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government assistance programs.

(2) For residential mortgage loans to have terms that are favorable to the borrower, the director shall determine that terms are consistent with loan

origination in a public or charitable context rather than in a commercial context.

(3) If the director determines that the application for a certificate of exemption should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. A decision of the director denying an application for a certificate of exemption pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(4) The department has the authority to examine the books and activities of an organization it determines is a bona fide nonprofit organization. The director may, following a hearing under the Administrative Procedure Act, revoke the certificate of exemption granted to a bona fide nonprofit organization if he or she determines that such nonprofit organization fails to meet the requirements of subsection (1) of this section.

(5) In making its determinations and examinations under subsections (1), (2), and (4) of this section, the department may rely on its receipt and review of:

- (a) Reports filed with federal, state, or local housing agencies and authorities;
- or
- (b) Reports and attestations required by the department.

**Source:** Laws 2012, LB965, § 13.

#### Cross References

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

### **45-706 License; issuance; denial; abandonment; appeal; renewal; fees; inactive status; renewal; reactivation of license; notice of cancellation.**

(1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Residential Mortgage Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application, (b) delivery of the bond required under section 45-724, and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of

subsection (1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3) If an applicant for a mortgage banker license does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(4)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-748.

(5)(a) The department may place a mortgage banker licensee that is a sole proprietorship on inactive status for a period of up to twelve months upon receipt of a request from the licensee for inactive status. The request shall include notice that the licensee has temporarily suspended business, is not acting as a mortgage banker in this state, and has no pending customer complaints. The department shall notify the licensee within ten business days as to whether the request has been granted and, if granted, of the date of expiration of the inactive status.

(b) If a mortgage banker license becomes inactive under this section, the license shall remain inactive until the license expires, is canceled, is surrendered, is suspended, is revoked, or is reactivated pursuant to subdivision (d) of this subsection.

(c) An inactive mortgage banker licensee may renew such inactive license if the licensee remains otherwise eligible for renewal pursuant to subdivision (4)(a) of this section, except for being covered by a surety bond pursuant to section 45-724. Such renewal shall not reactivate the license.

(d) The department has the authority to reactivate an inactive mortgage banker license following the department's receipt of a request from the inactive licensee that the licensee intends to resume business as a mortgage banker in this state if the inactive mortgage banker licensee meets the conditions for licensing at the time reactivation is requested, including, but not limited to, coverage by a surety bond pursuant to section 45-724.

(e) The department shall issue a notice of cancellation of an inactive mortgage banker license following the expiration of the period of inactive status set

by the department pursuant to subdivision (a) of this subsection if the inactive mortgage banker licensee fails to request reactivation of the license prior to the date of expiration.

(6) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

**Source:** Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2; Laws 2009, LB328, § 8; Laws 2012, LB965, § 14; Laws 2015, LB352, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

**45-727 Mortgage loan originator; license required; loan processor or underwriter; license required.**

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(3) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

**Source:** Laws 2009, LB328, § 12; Laws 2013, LB290, § 2.

**45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.**

(1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:



(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker, depository institution, or installment loan company unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 45-730;

(e) The applicant has passed a written test that meets the test requirement described in section 45-731; and

(f) The applicant is covered by a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007.

(2)(a) If the director determines that a mortgage loan originator license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial.

(b) The director shall not deny an application for a mortgage loan originator license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information.

(c) If an applicant for a mortgage loan originator license does not complete his or her license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice after initial filing of the application, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(d) A decision of the director denying a mortgage loan originator license application pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department.

(3) A mortgage loan originator license shall not be assignable.

**Source:** Laws 2009, LB328, § 14; Laws 2012, LB965, § 15; Laws 2013, LB290, § 3.

#### Cross References

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

#### **45-731 Written test requirement; subject areas.**

(1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 45-729, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination; and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may take a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

**Source:** Laws 2009, LB328, § 16; Laws 2012, LB965, § 16.

#### **45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.**

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) The department has the authority to reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator meets the conditions for licensing at the time the reactivation notice is received, including, but not limited to, coverage by a surety bond pursuant to subdivision (1)(f) of section 45-729.

**Source:** Laws 2009, LB328, § 19; Laws 2012, LB965, § 17.

**45-736 Unique identifier; use.**

The unique identifier of any licensee originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms,

solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

**Source:** Laws 2009, LB328, § 21; Laws 2012, LB965, § 18.

**45-737 Mortgage banker; licensee; duties.**

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept

collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Record or cause to be recorded a release of mortgage pursuant to the provisions of section 76-2803 or, in the case of a trust deed, record or cause to be recorded a reconveyance pursuant to the provisions of section 76-2803;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of three years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or

installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

**Source:** Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4; Laws 2015, LB352, § 2; Laws 2018, LB750, § 1.  
Effective date July 19, 2018.

#### **45-737.01 Mortgage loan originator; licensee; duties.**

(1) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by such licensee or notice of a filing of an involuntary petition in bankruptcy against such licensee;

(b) The filing of a criminal indictment or information against such licensee regarding (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(c) Such licensee was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(d) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against such licensee;

(e) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against such licensee; or

(f) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mort-

gage Association suspends or terminates such licensee's status as an approved loan originator.

(2) A licensee licensed as a mortgage loan originator shall update through the Nationwide Mortgage Licensing System and Registry his or her employment history on file with the department no later than ten business days after the submission of the required notice of the creation or termination of an employment relationship pursuant to section 45-735.

(3) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subsections (1) and (2) of this section, including, but not limited to, any of the following:

- (a) A change in such licensee's name;
- (b) A change in such licensee's residential address;
- (c) A change in such licensee's employment address;
- (d) The filing of a tax or other governmental lien against such licensee;
- (e) The entry of a monetary judgment against such licensee; or
- (f) The entry of an order against such licensee, including orders to which such licensee consented, by any other state or federal regulator.

**Source:** Laws 2013, LB290, § 5.

**45-741 Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.**

(1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, registrant, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

- (a) Criminal, civil, and administrative history information;
- (b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in 15 U.S.C. 1681a(p), as such section existed on January 1, 2010; and
- (c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such

licensee, registrant, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, registrant, individual, or person subject to the act, concerning the business of the licensee, registrant, individual, or person subject to the act.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions on a form prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) The director may send a notice of investigation or inquiry request for information to a licensee or registrant. Upon receipt by a licensee or registrant of the director's notice of investigation or inquiry request for information, the licensee or registrant shall respond within twenty-one calendar days. Each day beyond that time a licensee or registrant fails to respond as required by this subsection shall constitute a separate violation of the act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee, a registrant, or any person.

(6) For the purpose of any investigation, examination, or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee or registrant which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation;

(f) The United States Department of Veterans Affairs; or

(g) The Consumer Financial Protection Bureau.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regula-



tory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, registrant, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, registrant, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(11) The total charge for an examination or investigation shall be paid by the licensee or registrant as set forth in sections 8-605 and 8-606.

(12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

**Source:** Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45; R.S.Supp.,2008, § 45-710; Laws 2009, LB328, § 26; Laws 2010, LB892, § 15; Laws 2013, LB290, § 6.

**45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.**

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-737 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section and section 45-742.01, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

(4)(a) If a licensee fails to (i) renew its license as required by sections 45-706 and 45-732 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

**Source:** Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30; R.S.Supp., 2008, § 45-707; Laws 2009, LB328, § 27; Laws 2010, LB892, § 16; Laws 2011, LB75, § 4; Laws 2012, LB965, § 19.

#### Cross References

Administrative Procedure Act, see section 84-920.

**45-742.01 Mortgage banker or mortgage loan originator license; emergency orders authorized; grounds; notice; emergency hearing; judicial review; director; additional proceedings.**

(1) The director may enter an emergency order suspending, limiting, or restricting the license of any mortgage banker or mortgage loan originator without notice or hearing if it appears upon grounds satisfactory to the director that:

(a) The licensee has failed to file the report of condition as required by section 45-726;

(b) The licensee has failed to increase its surety bond to the amount required by subsection (2) of section 45-724;

(c) The licensee has failed to provide any report required by the director as a condition of issuing such person a mortgage banker or mortgage loan originator license;

(d) The licensee is in such financial condition that it cannot continue in business safely with its customers;

(e) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust;

(f) The licensee has had its license suspended or revoked in any state based upon any act involving fraud, deception, theft, or breach of trust; or

(g) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741.

(2) An emergency order issued under this section becomes effective when signed by the director. Upon entry of an emergency order, the director shall promptly notify the affected person that such order has been entered, the reasons for such order, and the right to request an emergency hearing.

(3) A party aggrieved by an emergency order issued by the director under this section may request an emergency hearing. The request for hearing shall be filed with the director within ten business days after the date of the emergency order.

(4) Upon receipt of a written request for emergency hearing, the director shall conduct an emergency hearing within ten business days after the date of receipt of the request for hearing unless the parties agree to a later date or a hearing officer sets a later date for good cause shown.

(5) A person aggrieved by an emergency order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department.

(6) The director may obtain an order from the district court of Lancaster County for the enforcement of the emergency order.

(7) The director may vacate or modify an emergency order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(8) If an emergency hearing has not been requested pursuant to subsection (3) of this section and the emergency order remains in effect sixty days after issuance, the director shall initiate proceedings pursuant to section 45-742

unless the license was surrendered or expired during the sixty-day time period after issuance of the emergency order.

(9) An emergency order issued under this section shall remain in effect until it is vacated, modified, or superseded by an order of the director, superseded by a voluntary consent or compliance agreement between the director and the licensee, or until it is terminated by a court order.

**Source:** Laws 2012, LB965, § 20.

**Cross References**

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

**ARTICLE 8**  
**CREDIT SERVICES ORGANIZATIONS**

Section  
45-804. Prohibited acts.

**45-804 Prohibited acts.**

A credit services organization, a salesperson, an agent, or a representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services, other than those described in subdivision (2) of this section, which the credit services organization has agreed to perform for the buyer unless the credit services organization has obtained a surety bond or established and maintained a surety account as provided in section 45-805;

(2) Charge a buyer or receive from a buyer money or other valuable consideration for obtaining or attempting to obtain an extension of credit that the credit services organization has agreed to obtain for the buyer before the extension of credit is obtained;

(3) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(4) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including (a) guaranteeing to erase bad credit or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete and (b) guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

(5) Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

(6) Make or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(7) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Secretary of State under section 45-806 unless otherwise provided by the Credit Services Organization Act; or

(8) Notwithstanding any other provision of law, charge any brokerage fees or any other fees or charges whatsoever in connection with a loan governed by the Nebraska Installment Loan Act.

**Source:** Laws 1991, LB 292, § 4; Laws 2018, LB194, § 1.  
Operative date January 1, 2019.

**Cross References**

Nebraska Installment Loan Act, see section 45-1001.

**ARTICLE 9**

**DELAYED DEPOSIT SERVICES LICENSING ACT**

Section	
45-901.	Act, how cited.
45-902.	Terms, defined.
45-904.	License required; void transaction; effect.
45-907.	Application; notice of filing; publication; hearing; investigation; costs.
45-910.	License; posting; renewal; fee.
45-911.	Surrender of license; effect.
45-915.01.	Licensee; books and records.
45-917.	Licensee; written notice; contents; fees, charges, and penalties; posting required.
45-918.	Fee; limitation.
45-918.01.	Returned check; collection; returned check charge; court costs; attorney's fees.
45-918.02.	Prepayment; how treated.
45-918.03.	Rescission; redemption.
45-918.04.	Licensee; payment options; electronic payment with authorization.
45-919.	Acts prohibited.
45-919.01.	Extended payment plan; request; terms; default.
45-920.	Director; examination of licensee; powers; costs.
45-921.	Alleged violations; director; powers and duties.
45-922.	Licensee; disciplinary actions; failure to renew.
45-923.	Cease and desist order; procedure; appeal.
45-927.	Fees, charges, costs, and fines; distribution.
45-930.	Financial Literacy Cash Fund; created; use; investment.
45-931.	Licensees; annual report; contents; department; duties; report.

**45-901 Act, how cited.**

Sections 45-901 to 45-931 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

**Source:** Laws 1994, LB 967, § 1; Laws 2006, LB 876, § 36; Laws 2012, LB269, § 1; Laws 2018, LB194, § 2.  
Operative date January 1, 2019.

**45-902 Terms, defined.**

For purposes of the Delayed Deposit Services Licensing Act:

(1) Annual percentage rate means an annual percentage rate as determined under section 107 of the federal Truth in Lending Act, 15 U.S.C. 1606, as such section existed on January 1, 2018, and includes all fees, interest, and charges

contained in a delayed deposit service contract, except for charges permitted for the presentation of instruments that are not negotiable under subdivision (1)(a)(v) of section 45-917 or returned unpaid under section 45-918.01;

(2) Check means any check, draft, or other instrument for the payment of money. Check also means an authorization to debit an account electronically;

(3) Default means a maker's failure to repay a delayed deposit transaction in compliance with the terms contained in a delayed deposit service agreement;

(4) Delayed deposit services business means any person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check, whether express or implied;

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

(6) Director means the Director of Banking and Finance or his or her designee;

(7) Financial institution has the same meaning as in section 8-101.03;

(8) Licensee means any person licensed under the Delayed Deposit Services Licensing Act;

(9) Maker means an individual who receives the proceeds of a delayed deposit transaction; and

(10) Person means an individual, proprietorship, association, joint venture, joint stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, or any group of individuals however organized.

**Source:** Laws 1994, LB 967, § 2; Laws 2001, LB 53, § 103; Laws 2003, LB 217, § 37; Laws 2017, LB140, § 154; Laws 2018, LB194, § 3.  
Operative date January 1, 2019.

**45-904 License required; void transaction; effect.**

No person shall operate a delayed deposit services business or make or offer a delayed deposit transaction in this state unless the person is licensed by the director as provided in the Delayed Deposit Services Licensing Act. Any delayed deposit transaction that is made by a person who is required to be licensed pursuant to the act but who is not licensed is void, and the person making such delayed deposit transaction has no right to collect, receive, or retain any principal, interest, fees, or any other charges in connection with such delayed deposit transaction.

**Source:** Laws 1994, LB 967, § 4; Laws 2018, LB194, § 4.  
Operative date January 1, 2019.

**45-907 Application; notice of filing; publication; hearing; investigation; costs.**

(1) When an application for a delayed deposit services business license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the director for three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the delayed deposit services business. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days

after the last publication. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may investigate the propriety of the issuance of a license to the applicant. The costs of such investigation shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held and operated under a license to engage in the delayed deposit services business in Nebraska pursuant to the Delayed Deposit Services Licensing Act for at least three calendar years immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the delayed deposit services business, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

**Source:** Laws 1994, LB 967, § 7; Laws 2006, LB 876, § 38; Laws 2008, LB851, § 23; Laws 2018, LB194, § 5.  
Operative date January 1, 2019.

#### **45-910 License; posting; renewal; fee.**

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of five hundred dollars for the main office location and five hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

**Source:** Laws 1994, LB 967, § 10; Laws 2001, LB 53, § 105; Laws 2005, LB 533, § 56; Laws 2012, LB269, § 2.

#### **45-911 Surrender of license; effect.**

A licensee may surrender a delayed deposit services business license by delivering to the director written notice that the license is surrendered. The department may issue a notice of cancellation of the license following such surrender in lieu of revocation proceedings. The surrender shall not affect the licensee's civil or criminal liability for acts committed prior to such surrender, affect the liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The director may establish procedures for the disposition of the books, accounts,



and records of the licensee and may require such action as he or she deems necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

**Source:** Laws 1994, LB 967, § 11; Laws 2006, LB 876, § 39; Laws 2018, LB194, § 6.

Operative date January 1, 2019.

**45-915.01 Licensee; books and records.**

(1) Each licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the department to determine whether the licensee is complying with the act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

(2) A licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by section 45-919.

(3) A licensee shall preserve or keep its books and records relating to every delayed deposit transaction for three years from the date of the inception of the transaction, or two years from the date a final entry is made thereon, including any applicable collection effort, whichever is later.

(4) The licensee shall maintain its books, accounts, and records, whether in physical or electronic form, at its designated principal place of business, except that books, accounts, and records which are older than two years may be maintained at any other place within this state as long as such records are available for inspection by the department.

**Source:** Laws 2006, LB 876, § 47; Laws 2018, LB194, § 7.

Operative date January 1, 2019.

**45-917 Licensee; written notice; contents; fees, charges, and penalties; posting required.**

(1)(a) Every licensee shall, at the time any delayed deposit transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing:

(i) The name of the maker, transaction date, and transaction amount;

(ii) The payment due date and total payment due;

(iii) The total of fees on the transaction, expressed as both a dollar amount and an annual percentage rate;

(iv) The date on which the check will be deposited or presented for negotiation; and

(v) Any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon. If the licensee required the maker to give two checks for one delayed deposit transaction, the licensee shall charge only one penalty in the event both checks are not negotiable on the date agreed upon.

(b) The notice required by this subsection shall include the following language, all capitalized and in at least ten-point font:

1. THIS TYPE OF SERVICE SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.

2. THE LAW DOES NOT ALLOW THIS TYPE OF TRANSACTION TO BE MORE THAN FIVE HUNDRED DOLLARS (\$500) IN TOTAL, INCLUDING FEES AND CHARGES, FROM ONE LENDER.

3. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION IF YOU DO SO BY THE NEXT BUSINESS DAY BEFORE 5 P.M.

4. YOU HAVE THE RIGHT TO RESCIND YOUR AUTHORIZATION FOR ELECTRONIC PAYMENT.

(2) In addition to the notice required by subsection (1) of this section, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee. Such notice shall be posted at every office of the licensee.

**Source:** Laws 1994, LB 967, § 17; Laws 2006, LB 876, § 43; Laws 2018, LB194, § 8.

Operative date January 1, 2019.

#### **45-918 Fee; limitation.**

(1) No licensee shall charge as a fee a total amount in excess of fifteen dollars per one hundred dollars or pro rata for any part thereof on the face amount of a check for services provided by the licensee.

(2) The fees set forth in this section shall not be charged to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowed under 10 U.S.C. 987, as such section existed on January 1, 2018.

**Source:** Laws 1994, LB 967, § 18; Laws 2018, LB194, § 9.

Operative date January 1, 2019.

#### **45-918.01 Returned check; collection; returned check charge; court costs; attorney's fees.**

If a check held by a licensee as a result of a delayed deposit transaction is returned unpaid to the licensee from a payor financial institution due to insufficient funds, a closed account, a stop-payment order, or any other reason, not including a bank error, the licensee shall have the right to exercise all civil means authorized by law to collect the face value of the check. In addition, the licensee may contract for and collect one returned check charge for each delayed deposit transaction, not to exceed fifteen dollars, plus court costs and reasonable attorney's fees as awarded by a court and incurred as a result of the default. However, such attorney's fees shall not exceed the amount of the check. The licensee shall not collect any other fees as a result of default. A returned check charge shall not be allowed if, due to forgery or theft, the transaction proceeds check is dishonored by the financial institution.

**Source:** Laws 2018, LB194, § 10.

Operative date January 1, 2019.

#### **45-918.02 Prepayment; how treated.**

A licensee shall accept prepayment from a maker prior to the due date without charging the maker a penalty of any kind.

**Source:** Laws 2018, LB194, § 11.

Operative date January 1, 2019.

**45-918.03 Rescission; redemption.**

(1) A maker shall have the right to rescind a delayed deposit transaction before 5 p.m. the next business day following the delayed deposit transaction.

(2) Prior to the licensee negotiating or presenting the check, the maker shall have the right to redeem any check held by a licensee as a result of a delayed deposit transaction if the maker pays the full amount to the licensee.

**Source:** Laws 2018, LB194, § 12.

Operative date January 1, 2019.

**45-918.04 Licensee; payment options; electronic payment with authorization.**

(1) A licensee may pay the proceeds from a delayed deposit transaction or rebate to the maker in the form of check, money order, cash, stored value card, Internet transfer, or authorized automated clearinghouse transaction. Neither the licensee nor any affiliate of the licensee shall charge the maker an additional finance charge or fee for cashing the licensee's check or for negotiating forms of transaction proceeds or rebates other than cash.

(2) A licensee may utilize electronic payment through transfer or withdrawal of funds from the maker's account only, but only with the written authorization of the maker.

**Source:** Laws 2018, LB194, § 13.

Operative date January 1, 2019.

**45-919 Acts prohibited.**

(1) No licensee shall:

(a) At any one time hold from any one maker more than two checks;

(b) At any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars;

(c) Hold or agree to hold a check for more than thirty-four days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-four-day period;

(d) Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee, an affiliate of the licensee, or any other person;

(e) Accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee;

(f) Except as provided in section 45-919.01, renew, roll over, defer, or in any way extend a delayed deposit transaction by allowing the maker to pay less than the total amount of the check and any authorized fees or charges. This subdivision shall not prevent a licensee that agreed to hold a check for less than thirty-four days from agreeing to hold the check for an additional period of time no greater than the thirty-four days it would have originally been able to hold the check if (i) the extension is at the request of the maker, (ii) no additional fees are charged for the extension, and (iii) the delayed deposit transaction is completed as required by subdivision (1)(c) of this section. The licensee shall retain written or electronic proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this

subdivision has occurred and the department may pursue any remedies or actions available to it under the Delayed Deposit Services Licensing Act;

(g) Enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the department that completion of the prior delayed deposit transaction has occurred. The licensee shall retain written proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the act;

(h) Charge, collect, or receive any finance charges, fees, interest, or similar charges for loan brokerage, insurance, or any other ancillary products;

(i) Negotiate or present a paper check for payment unless the check is endorsed with the actual business name of the licensee;

(j) Engage, in connection with a delayed deposit transaction, in unfair or deceptive practices or advertising under the Uniform Deceptive Trade Practices Act to engage in any act that limits or restricts the application of the Delayed Deposit Services Licensing Act, including, but not limited to, making transactions disguised as personal property, personal sales, or leaseback transactions, or disguise transaction proceeds as cash rebated for the pretextual installment sale of goods and services; or

(k) Attempt to deposit or negotiate a check after two consecutive failed collection attempts unless the licensee has obtained a new, written payment authorization from the maker.

(2) No licensee, affiliate of a licensee, or any other person, including a person operating as a credit services organization, shall charge, collect, or receive any finance charges, fees, interest, or similar charges that would cause a maker to pay an amount in excess of or in addition to those permitted under the Delayed Deposit Services Licensing Act in connection with a delayed deposit transaction, including, but not limited to, charges for loan brokerage, insurance, or any other ancillary products.

(3) For purposes of this section, (a) completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in section 8-101.03 or the maker redeemed the check by paying the full amount of the check in cash to the licensee and (b) licensee shall include (i) a person related to the licensee by common ownership or control, (ii) a person in whom such licensee has any financial interest of ten percent or more, or (iii) any employee or agent of the licensee.

**Source:** Laws 1994, LB 967, § 19; Laws 2000, LB 932, § 34; Laws 2006, LB 876, § 44; Laws 2017, LB140, § 155; Laws 2018, LB194, § 14.

Operative date January 1, 2019.

#### Cross References

Uniform Deceptive Trade Practices Act, see section 87-306.

### **45-919.01 Extended payment plan; request; terms; default.**

(1) A maker who cannot pay back a delayed deposit transaction when it is due may elect once in any twelve-month period to repay the delayed deposit transaction to the licensee by means of an extended payment plan.

(2) To request an extended payment plan, the maker, before the due date of the outstanding delayed deposit transaction, must request the plan and sign an amendment to the delayed deposit agreement that reflects the new payment schedule and terms.

(3) The extended payment plan's terms must allow the maker, at no additional cost, to repay the outstanding delayed deposit transaction, including any fee due, in at least four equal payments that coincide with the maker's periodic pay dates.

(4) The maker may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge the maker any interest or additional fees during the term of the extended payment plan.

(5) If the maker fails to pay any extended payment plan installment when due, the maker shall be in default of the payment plan and the licensee immediately may accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

**Source:** Laws 2018, LB194, § 15.  
Operative date January 1, 2019.

**45-920 Director; examination of licensee; powers; costs.**

(1) The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, or which is operating under the code of law for the District of Columbia.

**Source:** Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52; Laws 2013, LB279, § 3.

**45-921 Alleged violations; director; powers and duties.**

(1) The director may examine or investigate complaints about or reports of alleged violations of the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director thereunder. The director may order the actual cost of such examination or investigation to be paid by the person who is the subject of the examination or investigation, whether the alleged violator is licensed or not.

(2) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director under the act.

(3) For purposes of any investigation, examination, or proceeding under the act, the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the examination, investigation, or proceeding.

(4) In the case of contumacy by or refusal to obey a subpoena issued to any person, the district court of Lancaster County, upon application by the director, may issue an order requiring such person to appear before the director and to produce documentary evidence if so ordered to give evidence on the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

(5) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(6) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has violated subsection (5) of this section, the director may order such person to pay (a) an administrative fine of not more than two thousand dollars for each separate violation and (b) the costs of investigation. The department shall remit fines collected under this subsection to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(7) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (6) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Delayed Deposit Services Licensing Act.

**Source:** Laws 1994, LB 967, § 21; Laws 1997, LB 137, § 24; Laws 2004, LB 999, § 37; Laws 2018, LB194, § 16.  
Operative date January 1, 2019.

#### Cross References

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

#### **45-922 Licensee; disciplinary actions; failure to renew.**

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if he or she finds:

(a) A licensee or any of its officers, directors, partners, or members has knowingly violated the act or any rule, regulation, or order of the director thereunder;

(b) A fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the director to refuse to issue such license;

(c) A licensee has abandoned its place of business for a period of thirty days or more;

(d) A licensee or any of its officers, directors, partners, or members has knowingly subscribed to, made, or caused to be made any false statement or false entry in the books and records of any licensee, has knowingly subscribed to or exhibited false papers with the intent to deceive the department, has failed to make a true and correct entry in the books and records of such licensee of its business and transactions in the manner and form prescribed by the department, or has mutilated, altered, destroyed, secreted, or removed any of the books or records of such licensee without the written approval of the department or as provided in section 45-925; or

(e) A licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3)(a) If a licensee fails to renew its license as required by section 45-910 and does not voluntarily surrender the license pursuant to section 45-911, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-906, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a maker of a check.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for fines levied against the licensee or any of its officers, directors, shareholders, partners, or members, pursuant to section 45-925, for acts committed before the revocation, suspension, cancellation, or expiration.

**Source:** Laws 1994, LB 967, § 22; Laws 2001, LB 53, § 106; Laws 2006, LB 876, § 45; Laws 2008, LB851, § 24; Laws 2009, LB327, § 19; Laws 2018, LB194, § 17.

Operative date January 1, 2019.

**Cross References**

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

**45-923 Cease and desist order; procedure; appeal.**

If the director believes that any person has engaged in or is about to engage in any act or practice constituting a violation of the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director, the director may issue a cease and desist order and prohibit the making of additional delayed deposit transactions as part of such order.

Upon entry of a cease and desist order the director shall promptly notify in writing all persons to whom the order is directed that it has been entered and of the reasons for the order. Any person to whom the order is directed may in writing request a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of such written request, the matter shall be set for hearing within thirty business days after receipt by the director, unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order of the director shall automatically become final and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall issue his or her written findings of fact and conclusions of law and may affirm, vacate, or modify the order.

The director may vacate or modify an order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so. Any person aggrieved by a final order of the director may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1994, LB 967, § 23; Laws 2001, LB 53, § 107; Laws 2018, LB194, § 18.

Operative date January 1, 2019.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **45-927 Fees, charges, costs, and fines; distribution.**

(1) The director shall collect fees, charges, costs, and fines under the Delayed Deposit Services Licensing Act and remit them to the State Treasurer. Except as provided in subsection (2) of this section, the State Treasurer shall credit the fees, charges, and costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) For fees collected pursuant to section 45-910, the State Treasurer shall (a) credit one hundred fifty dollars of each renewal fee for a main office to the Financial Institution Assessment Cash Fund and three hundred fifty dollars of each renewal fee for a main office to the Financial Literacy Cash Fund and (b) credit one hundred dollars of each renewal fee for a branch office to the Financial Institution Assessment Cash Fund and four hundred dollars of each renewal fee for a branch office to the Financial Literacy Cash Fund.

**Source:** Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53; Laws 2012, LB269, § 3.

#### **45-930 Financial Literacy Cash Fund; created; use; investment.**

The Financial Literacy Cash Fund is created. Amounts credited to the fund shall include that portion of each renewal fee as provided in section 45-927 and such other revenue as is incidental to administration of the fund. The fund shall be administered by the University of Nebraska and shall be used to provide assistance to nonprofit entities that offer financial literacy programs to students in grades kindergarten through twelve. 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 2012, LB269, § 4.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **45-931 Licensees; annual report; contents; department; duties; report.**

(1) Licensees shall, on an annual basis, provide the following information to the director, in a uniform manner prescribed by the department: Total number of makers; total number of transactions; average transaction size; total contracted transaction charges; total transaction actual charges; number of defaulted transactions; number of charged-off transactions; dollar value of transactions charged off; number of nonnegotiable check fees and dollar value for the same; average contracted annual percentage rate; and any other nonprivate information which may be requested in the discretion of the director.

(2) The department shall compile the total number of licensees operating in this state by location and the information required in subsection (1) of this section regarding the transaction activities of licensees and makers under the Delayed Deposit Services Licensing Act and shall report electronically to the Clerk of the Legislature on or before December 1, 2018, and annually thereafter.

**Source:** Laws 2018, LB194, § 19.

Operative date July 19, 2018.

## ARTICLE 10

### NEBRASKA INSTALLMENT LOAN ACT

#### Section

- 45-1001. Act, how cited.
- 45-1002. Terms, defined; act; applicability.
- 45-1008. License; issuance; requirements; term.
- 45-1009. License; application; grant or denial; time allowed; abandoned application; department; powers.
- 45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.
- 45-1018. Licensees; reports.
- 45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.
- 45-1070. Minimum term.

#### **45-1001 Act, how cited.**

Sections 45-1001 to 45-1070 shall be known and may be cited as the Nebraska Installment Loan Act.

**Source:** Laws 2001, LB 53, § 29; Laws 2005, LB 533, § 57; Laws 2009, LB328, § 40; Laws 2018, LB194, § 20.

Operative date January 1, 2019.

#### **45-1002 Terms, defined; act; applicability.**

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

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

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

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

(g) Financial institution has the same meaning as in section 8-101.03;

(h) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(k) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(l) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(m) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

**Source:** Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19; Laws 2011, LB77, § 3; Laws 2012, LB965, § 21; Laws 2017, LB140, § 156.

#### Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

#### **45-1008 License; issuance; requirements; term.**

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following December 31 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act.

**Source:** Laws 1941, c. 90, § 12, p. 349; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-120; Laws 1993, LB 121, § 265; Laws 1997, LB 555, § 8; R.S.1943, (1998), § 45-120; Laws 2001, LB 53, § 36; Laws 2009, LB328, § 43; Laws 2013, LB279, § 4.

**45-1009 License; application; grant or denial; time allowed; abandoned application; department; powers.**

(1) The department shall approve or deny every application for license under section 45-1008 within ninety days after the filing of an application, if the application is substantially complete and is accompanied by the required fees and the approved bond.

(2) If an applicant for a license under section 45-1008 does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

**Source:** Laws 1941, c. 90, § 12, p. 350; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-121; Laws 1999, LB 396, § 26; R.S.Supp.,2000, § 45-121; Laws 2001, LB 53, § 37; Laws 2017, LB185, § 3.

**45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.**

(1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

**Source:** Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S. 1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54; Laws 2009, LB328, § 44; Laws 2013, LB279, § 5.

**Cross References**

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

**45-1018 Licensees; reports.**

(1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report

shall be made under oath and shall be in the form and manner prescribed by the department.

(2) A licensee shall submit a mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

**Source:** Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53, § 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45; Laws 2010, LB892, § 21; Laws 2013, LB279, § 6.

**45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.**

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial

payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error

notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt suspension contract is a contract of a financial institution or licensee and such contract is sold directly by such financial institution or licensee or by an unaffiliated, nonexclusive agent of such financial institution or licensee in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2011, and the financial institution or licensee is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage; amounts charged for a guaranteed asset protection waiver; and fees and expenses charged for electronic title and lien services. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not



exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

**Source:** Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB 702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50; Laws 2009, LB328, § 47; Laws 2010, LB571, § 11; Laws 2011, LB77, § 4.

**45-1070 Minimum term.**

Notwithstanding any other provision of law, the minimum term of a loan contract for any loan governed by the Nebraska Installment Loan Act shall be six months from the loan transaction date.

**Source:** Laws 2018, LB194, § 21.  
Operative date January 1, 2019.

**ARTICLE 11**

**GUARANTEED ASSET PROTECTION WAIVER ACT**

Section  
45-1103. Terms, defined.

**45-1103 Terms, defined.**

For purposes of the Guaranteed Asset Protection Waiver Act:

- (1) Borrower means a debtor, retail buyer, or lessee under a finance agreement;
- (2) Creditor means:
  - (a) The lender in a loan or credit transaction involving a motor vehicle;
  - (b) The lessor in a lease transaction involving a motor vehicle;
  - (c) Any retail seller of motor vehicles that provides credit to retail buyers of such motor vehicles if such entities comply with the provisions of the act; or
  - (d) The assignees of any of the foregoing to whom the credit obligation is payable;

(3) Creditor's designee means a person other than the creditor that performs administrative or operational functions pursuant to a guaranteed asset protection waiver program;

(4) Finance agreement means a loan, credit transaction, lease, or retail installment sales contract for the purchase or lease of a motor vehicle;

(5) Financial institution has the same meaning as in section 8-101.03;

(6) Free-look period means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time must not be shorter than thirty days;

(7) Guaranteed asset protection waiver means a contractual agreement wherein a creditor or the creditor's designee agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver or unrecovered theft as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement. If a borrower does not have motor vehicle insurance, the creditor or the creditor's designee will accept a report prepared pursuant to insurance industry standards by a qualified inspector declaring the motor vehicle a total loss or a law enforcement report declaring the motor vehicle an unrecovered theft. Nothing in the act shall be construed to require the waiver to pay more than the amount that would have been paid if the borrower had motor vehicle insurance at the time of loss;

(8) Motor vehicle means self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers; and

(9) Person includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

**Source:** Laws 2010, LB571, § 3; Laws 2017, LB140, § 157.

## ARTICLE 12

### NEBRASKA CONSTRUCTION PROMPT PAY ACT

#### Section

45-1201. Act, how cited.

45-1202. Terms, defined.

45-1203. Contractor; payment; payment request; subcontractor; payment; retainage; payment.

45-1204. Withholdings; authorized.

45-1205. Delay in payment; additional interest payment.

45-1211. Violation of act; action for recovery; attorney's fees and costs.

#### **45-1201 Act, how cited.**

Sections 45-1201 to 45-1211 shall be known and may be cited as the Nebraska Construction Prompt Pay Act.

**Source:** Laws 2010, LB552, § 1; Laws 2014, LB961, § 4.

**45-1202 Terms, defined.**

For purposes of the Nebraska Construction Prompt Pay Act:

(1) Contractor includes individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person. Contractor does not include an individual or an entity performing work on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision;

(2) Owner means a person (a) who has an interest in any real property improved, (b) for whom an improvement is made, or (c) who contracted for an improvement to be made. Owner includes a person, an entity, or any political subdivision of this state. Owner does not include the State of Nebraska;

(3) Owner's representative means an architect, an engineer, or a construction manager in charge of a project for the owner or such other contract representative or officer as designated in the contract document as the party representing the owner's interest regarding administration and oversight of the project;

(4) Real property means real estate that is improved, including private and public land, and leaseholds, tenements, and improvements placed on the real property;

(5) Receipt means actual receipt of cash or funds by the contractor or subcontractor;

(6) Subcontractor means a person or an entity that has contracted to furnish labor or materials to, or performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property. Subcontractor includes materialmen and suppliers. Subcontractor does not include an individual or an entity performing work as a subcontractor on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision; and

(7) Substantially complete means the stage of a construction project when the project, or a designated portion thereof, is sufficiently complete in accordance with the contract so that the owner can occupy or utilize the project for its intended use.

**Source:** Laws 2010, LB552, § 2; Laws 2014, LB961, § 5.

**45-1203 Contractor; payment; payment request; subcontractor; payment; retainage; payment.**

(1) When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty

days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract.

(2) When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor and the subcontractor shall pay his, her, or its subcontractor, within ten days after receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for the subcontractor's work and materials based on work completed or service provided under the subcontract for which the subcontractor has properly requested payment, if the subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work.

(3) The owner or the owner's representative shall release and pay all retainage for work completed in accordance with the provisions of the contract within forty-five days after the project, or a designated portion thereof, is substantially complete. When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay all retainage due such subcontractor within ten days after receipt of the retainage.

**Source:** Laws 2010, LB552, § 3; Laws 2014, LB961, § 6.

#### **45-1204 Withholdings; authorized.**

When work has been performed pursuant to a contract, an owner, a contractor, or a subcontractor may only withhold payment:

(1) For retainage, in an amount not to exceed the amount specified in the applicable contract, which shall not exceed a rate of ten percent. If the scope of work for the contractor or subcontractor from which retainage is withheld is fifty percent complete and if the contractor or subcontractor has performed work in accordance with the provisions in the applicable contract, no more than five percent of any additional progress payment may be withheld as retainage if the contractor or subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work;

(2) Of a reasonable amount, to the extent that such withholding is allowed in the contract, for any of the following reasons:

(a) Reasonable evidence showing that the contractual completion date will not be met due to unsatisfactory job progress;

(b) Third-party claims filed or reasonable evidence that such a claim will be filed with respect to work under the contract; or

(c) Failure of the contractor to make timely payments for labor, equipment, subcontractors, or materials; or

(3) After substantial completion, in an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the work remaining on the contract.

**Source:** Laws 2010, LB552, § 4; Laws 2014, LB961, § 7.

#### **45-1205 Delay in payment; additional interest payment.**

Except as provided in section 45-1204, if a periodic or final payment to (1) a contractor is delayed by more than thirty days after receipt of a properly submitted periodic or final payment request by the owner or owner's representative or (2) a subcontractor is delayed by more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the remitting owner, contractor, or subcontractor shall pay the contractor or subcontractor interest due until such amount is paid, beginning on the day following the payment due date at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance. Interest is due under this section only after the person charged the interest has been notified of the provisions of this section by the contractor or subcontractor. Acceptance of progress payments or a final payment shall release all claims for interest on such payments.

**Source:** Laws 2010, LB552, § 5; Laws 2014, LB961, § 9.

**45-1211 Violation of act; action for recovery; attorney's fees and costs.**

Any individual, partnership, firm, limited liability company, corporation, or company may bring an action to recover any damages caused to such person or entity by a violation of the Nebraska Construction Prompt Pay Act. In addition to an award of damages, the court may award a plaintiff reasonable attorney's fees and costs as the court determines is appropriate.

**Source:** Laws 2014, LB961, § 8.