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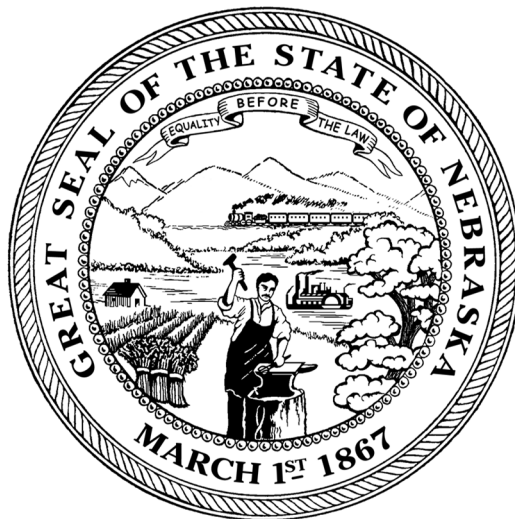


# REVISED STATUTES OF NEBRASKA

## 2020 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the  
State of Nebraska

**HIGHWAYS AND BRIDGES**

**CHAPTER 39  
HIGHWAYS AND BRIDGES**

Article.

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**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.
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- 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.

**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.

(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; Laws 2019, LB82, § 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 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; Laws 2019, LB82, § 2.

#### **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.  
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

39-1349. Construction contracts; letting; procedure; interest on retained payments; exception; predetermined minimum wages; powers of department.  
39-1350. Bids; contracts; department powers; department authorized to act for political subdivision.

**STATE HIGHWAYS**

**§ 39-1301**

Section

- 39-1351. Construction contracts; bidders; qualifications; evaluation by department; powers of department.
- 39-1352. Construction contracts; bidders; statement of qualifications.
- 39-1353. Construction contracts; request authorization to bid; issuance to certain bidders.
- 39-1354. Construction contracts; plans; reproduction; how obtained.

(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 provi-

sions 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.

(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 or program as required by section 39-2115 or an annual plan or program under section 39-2118. 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; Laws 2019, LB82, § 3.

#### Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.

Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

**39-1323.01 Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.**

The Nebraska Department of Transportation, subject to the approval of the Governor, and the United States Department of Transportation if such department has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which area or land was acquired for

highway purposes. The Director-State Engineer, for the Nebraska Department of Transportation, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

**Source:** Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5; Laws 2017, LB339, § 126.

(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

##### **39-1349 Construction contracts; letting; procedure; interest on retained payments; exception; predetermined minimum wages; powers of department.**

(1) Except as provided in subsections (5) and (6) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts

must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department.

(2) Except as provided in subsection (3) of this section, if the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(3) Subsection (2) of this section shall not apply to contracts which provide for payment pursuant to a set schedule over a period of time that extends beyond the completion of construction.

(4) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(5) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

(6) The department, in its sole discretion, may permit a federal agency to let contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances and may permit such federal agency to perform any and all other aspects of the project to which such contract relates, including, but not limited to, preliminary engineering, environmental clearance, final design, and construction engineering, when the department determines that it is in the public interest to do so. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

**Source:** Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640;

Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB312, § 2; Laws 2019, LB616, § 1.

**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.

**39-1351 Construction contracts; bidders; qualifications; evaluation by department; powers of department.**

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification. Such application shall be made not later than five days before the letting of the contract unless fewer than five days is specified by the department. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, bonding capacity as determined by a bonding agency licensed to do business in the State of Nebraska or other sufficient financial showing deemed satisfactory by the department, and performance record. In determining the qualification of an applicant to bid on any particular contract, the department shall consider the resources available for the particular contract contemplated.

(2) The department may, in its sole discretion, grant an exemption from all prequalification requirements for (a) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if the estimate of the department for such work is one hundred thousand dollars or less or (b) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if such work is of an emergency nature.

**Source:** Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6; Laws 2015, LB312, § 4; Laws 2019, LB117, § 1.

**39-1352 Construction contracts; bidders; statement of qualifications.**

(1) Except as provided in subsection (2) of this section, any person proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall submit to the department, at such times as it may require, a statement showing such person's qualifications. Such statement shall be under

oath and on a standard form to be prepared and supplied by the department. The statement shall be confidential and only for the use of the department.

(2) Subsection (1) of this section 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, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB312, § 5; Laws 2019, LB117, § 2.

**39-1353 Construction contracts; request authorization to bid; issuance to certain bidders.**

(1) Any person desiring to bid on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall request an authorization to bid from 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 authorization 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; Laws 2019, LB117, § 3.

**39-1354 Construction contracts; plans; reproduction; how obtained.**

The department, in its discretion, may provide paper or electronic reproductions of the plans prepared by the department for any contract to be let for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, to any person desiring such paper or electronic reproductions. Such person shall pay to the department a reasonable sum, to be fixed by the department in an amount estimated to cover the actual cost of preparing such paper or electronic reproductions.

**Source:** Laws 1955, c. 148, § 54, p. 441; Laws 2019, LB117, § 4.

(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.
- 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.

**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.

**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.

39-1508. Highway superintendent; duties.

39-1512. Repealed. Laws 2019, LB414, § 3.

(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.

##### **39-1508 Highway superintendent; duties.**

It shall be the duty of the county highway superintendent to:

(1) Annually submit to the county board a proposed schedule of construction, repair, maintenance, and supervision of county roads and bridges in conjunction with sections 39-2115, 39-2119, and 39-2120;

(2) Annually file with the county clerk a revised and current map of the county roads clearly distinguishing the primary and secondary roads, indicating the past year's improvements thereon, and showing the number of miles of roads established during the year and the location thereof; and

(3) Undertake the projects contained in subdivision (1) of this section, and when requested by the county board report the projects completed, the projects in construction, the equipment and material purchased, the amounts expended upon roads and bridges, and the sum remaining to be expended, except that

deviations from the adopted program may be authorized by the unanimous vote of the county board in case of an emergency.

**Source:** Laws 1957, c. 155, art. II, § 8, p. 516; Laws 2019, LB414, § 1.

**39-1512 Repealed. Laws 2019, LB414, § 3.**

**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, 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.

**Source:** Laws 2018, LB130, § 10.

**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.

**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.

**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.

#### 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.

**§ 39-2103****HIGHWAYS AND BRIDGES**

## Section

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.
39-2109.	Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; duties.
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; additional programs.
39-2114.	Counties and municipalities; contract between themselves.
39-2115.	Six-year plan or program; basis; certification form; failure to file; penalty; funds placed in escrow.
39-2116.	Repealed. Laws 2019, LB82, § 18.
39-2117.	Repealed. Laws 2019, LB82, § 18.
39-2118.	Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.
39-2119.	Counties and municipalities; plan or program for specific improvements; hearing; duty to certify compliance; penalty; funds placed in escrow.
39-2119.01.	Repealed. Laws 2019, LB82, § 18.
39-2120.	Certification form for annual filing; Board of Public Roads Classifications and Standards; develop; contents.
39-2121.	Department of Transportation; counties; municipalities; certification form; filing; penalty; when imposed; appeal.
39-2122.	Board of Public Roads Classifications and Standards; powers.
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.

**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 expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. 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; Laws 2020, LB381, § 28.  
Operative date January 1, 2021.

**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.

**39-2109 Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; duties.**

The Board of Public Roads Classifications and Standards shall develop and adopt the specific criteria for each functional classification set forth in sections 39-2103 and 39-2104, which criteria shall be consistent with the general criteria set forth in those sections. No such criteria shall be adopted until after public hearings have been held thereon at such times and places as to assure interested parties throughout the state an opportunity to be heard thereon. Following their adoption, the board shall provide an electronic copy of such criteria to the Secretary of State and the Clerk of the Legislature. The board shall also provide an electronic notification of such criteria to the appropriate representative of each county and each incorporated municipality and to the Director-State Engineer.

**Source:** Laws 1969, c. 312, § 9, p. 1123; Laws 1980, LB 873, § 3; Laws 1983, LB 10, § 5; Laws 2008, LB1068, § 6; Laws 2019, LB82, § 4.

**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; additional programs.**

(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.

(7) In cooperation with the Department of Transportation, counties, and municipalities, the board is authorized to develop, support, approve, and implement programs and project strategies that provide additional flexibility in the design and maintenance standards. Once a program is established, the board shall allow project preapproval for all projects that conform to the agreed-upon program. The programs shall be set out in memorandums of understanding or guidance documents and may include, but are not limited to, the following:

(a) Practical design, flexible design, or similar programs or strategies intended to focus funding on the primary problem or need in constructing projects that will not meet all the standards but provide substantial overall benefit at a reasonable cost to the public;

(b) Asset preservation or preventative maintenance programs and strategies that focus on extending the life of assets such as, but not limited to, pavement and bridges that may incorporate benefit cost, cost effectiveness, best value, or lifecycle analysis in determining the project approach and overall benefit to the public; and

(c) Context sensitive design programs or similar programs that consider the established needs and values of a county, municipality, community, or other connected group to enable projects that balance safety while making needed improvements in a manner that fits the surroundings and provides overall benefit to the public.

**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; Laws 2019, LB82, § 5.

### **39-2114 Counties and municipalities; contract between themselves.**

In order to achieve the efficiencies and economics resulting from unified operations, the Legislature encourages the counties and municipalities to make use of the Interlocal Cooperation Act or the Joint Public Agency Act by contracting between and among themselves for cooperative programs of administering all phases of their road and street programs.

**Source:** Laws 1969, c. 312, § 14, p. 1124; Laws 1999, LB 87, § 72; Laws 2019, LB82, § 6.

#### **Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.



**39-2115 Six-year plan or program; basis; certification form; failure to file; penalty; funds placed in escrow.**

The Department of Transportation and each county and municipality shall develop, adopt, maintain as a public record, and annually update a long-range, six-year plan or program 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. The department and each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality, or the department, shall fail to file its certification form on or before its due 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 certification form 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 and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

**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; Laws 2019, LB82, § 7.

**39-2116 Repealed. Laws 2019, LB82, § 18.****39-2117 Repealed. Laws 2019, LB82, § 18.****39-2118 Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.**

The Department of Transportation shall annually develop, adopt, and maintain as a public record a plan or program for specific highway improvements for the current year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The department shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120.

**Source:** Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155; Laws 2019, LB82, § 8.

**39-2119 Counties and municipalities; plan or program for specific improvements; hearing; duty to certify compliance; penalty; funds placed in escrow.**

Each county and municipality shall annually develop, adopt, and maintain as a public record, a one-year plan or program for specific highway, road, or street improvements for the current year. No such plan or program, or revision to such plan or program, shall be adopted until after a public hearing thereon and its approval by the governing body. Each county and municipality shall

schedule and hold the public hearing each year, and such hearing may be held prior to or in conjunction with that entity's annual public hearing on its proposed budget statement in any year such budget statement hearing is held pursuant to section 13-506. Each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality shall fail to comply with the provisions of this section, 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 until there has been compliance. 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 and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

**Source:** Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB277, § 3; Laws 2019, LB82, § 9.

**39-2119.01 Repealed. Laws 2019, LB82, § 18.**

**39-2120 Certification form for annual filing; Board of Public Roads Classifications and Standards; develop; contents.**

The Board of Public Roads Classifications and Standards shall develop and schedule for implementation a certification form for annual filing pursuant to section 39-2121 by the Department of Transportation and each county and municipality. The certification form shall include:

(1) A statement from the department and each county or municipality that it has developed, adopted, and included in its public records the plans, programs, or standards required by sections 39-2115 to 39-2119;

(2) A statement that the department and each county or municipality:

(a) Meets the plans, programs, or standards of design, construction, and maintenance for its highways, roads, or streets;

(b) Expends all tax revenue for highway, road, or street purposes in accordance with approved plans, programs, or standards, including county and municipal tax revenue as well as highway-user revenue allocations;

(c) Uses a system of revenue and cost accounting which clearly includes a comparison of receipts and expenditures for approved budgets, plans, programs, and standards;

(d) Uses a system of budgeting which reflects uses and sources of funds in terms of plans, programs, or standards and accomplishments;

(e) Uses an accounting system including an inventory of machinery, equipment, and supplies; and

(f) Uses an accounting system that tracks equipment operation costs; and

(3) The information required under subsection (2) of section 39-2510 or subsection (2) of section 39-2520, when applicable.

The certification by the department shall be signed by the Director-State Engineer. The certification by each county and municipality shall be signed by the board chairperson or mayor and shall include a copy of the resolution or ordinance of the governing body of the county or municipality authorizing the signing of the certification form.

**Source:** Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156; Laws 2019, LB82, § 10.

**39-2121 Department of Transportation; counties; municipalities; certification form; filing; penalty; when imposed; appeal.**

(1) The certification form required to be filed with the Board of Public Roads Classifications and Standards pursuant to section 39-2120 shall be filed annually by the Department of Transportation by July 31 and by each county and municipality by October 31.

(2) If any county or municipality or the department fails to file such certification form on or before its due 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 certification form 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 and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

(3) If any county or municipality either (a) files a materially false certification form or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false certification form 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; Laws 2019, LB82, § 11.

**Cross References**

Administrative Procedure Act, see section 84-920.

**39-2122 Board of Public Roads Classifications and Standards; powers.**

The Board of Public Roads Classifications and Standards may make occasional random checks of county and municipal construction projects to deter-

mine that the standards of design and construction developed under section 39-2113 are being met.

**Source:** Laws 1969, c. 312, § 22, p. 1128; Laws 1971, LB 100, § 11; Laws 2019, LB82, § 12.

**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 66-739 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; Laws 2019, LB512, § 2.

**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	
39-2304.	Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.
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.	Licenses; additional licensure; requirements.
39-2310.	Funds received under act; use.

**39-2304 Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.**

The Board of Examiners for County Highway and City Street Superintendents is created. The board shall consist of seven members to be appointed by the Governor, four of whom shall be county representatives, and three of whom shall be municipal representatives.

Immediately preceding appointment to the board, each county and municipal representative shall hold a current license as a county highway or city street superintendent pursuant to the County Highway and City Street Superintendents Act. Of the county representatives, no more than one member shall be appointed from each class of county as defined in section 23-1114.01, and of the municipal representatives, no more than one shall be appointed from each congressional district, one of whom shall be a representative of a city of the metropolitan or primary class, one of whom shall be a representative of a city

of the first class, and one of whom shall be a representative of a city of the second class or a village.

In making such appointments, the Governor may give consideration to a list of licensed county highway engineers, county highway superintendents, and county surveyors submitted by the Nebraska Association of County Officials and to a list of licensed city street superintendents or street commissioners, city engineers, and public works directors submitted by the League of Nebraska Municipalities. Two county representatives shall initially be appointed for terms of two years each, and two county representatives shall initially be appointed for terms of four years each. One municipal representative shall initially be appointed for a term of two years, and two municipal representatives shall initially be appointed for terms of four years each. Thereafter, all such appointments shall be for terms of four years each.

In the event a county or municipal representative loses his or her license as a county highway or city street superintendent, such person shall no longer be qualified to serve on the board and such seat shall be vacant. In the event of a vacancy occurring on the board for any reason, such vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Such appointed person shall meet the same requirements and qualifications as the member whose vacancy he or she is filling.

Members of the board shall receive no compensation for their services as members of the board but shall be reimbursed for expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1969, c. 144, § 4, p. 666; Laws 1981, LB 204, § 63; Laws 1992, LB 175, § 1; Laws 2003, LB 500, § 4; Laws 2020, LB381, § 29.

Operative date January 1, 2021.

**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.

**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.

**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.

**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

- 39-2502. County highway superintendent, defined; duties; incentive payment.  
 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.



## Section

39-2507. Allocation of funds for road purposes; factors used.

39-2508. Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.

39-2510. Funds received; use; restriction; exception.

## (b) STREETS

39-2512. City street superintendent, defined; duties; incentive payment.

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.

39-2520. Funds received; use; restriction; exception.

## (a) ROADS

**39-2502 County highway superintendent, defined; duties; incentive payment.**

An incentive payment shall be made to each county having in its employ a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2510, county highway superintendent means a person who actually performs the following duties:

(1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;

(2) Developing an annual program for design, construction, and maintenance;

(3) Developing an annual budget based on programmed projects and activities;

(4) Submitting such plans, programs, and budgets to the local governing body for approval; and

(5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

**Source:** Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7; Laws 2019, LB82, § 13.

## Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

**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.

**39-2510 Funds received; use; restriction; exception.**

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a county or municipal county that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The county or municipal county shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The county

or municipal county shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

**Source:** Laws 1969, c. 315, § 10, p. 1138; Laws 1997, LB 271, § 15; Laws 2006, LB 904, § 2; Laws 2019, LB82, § 14; Laws 2019, LB472, § 8.

(b) STREETS

**39-2512 City street superintendent, defined; duties; incentive payment.**

An incentive payment shall be made to each municipality or municipal county having in its employ a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2520, city street superintendent means a person who actually performs the following duties:

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval; and
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

**Source:** Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8; Laws 2019, LB82, § 15.

**Cross References**

County Highway and City Street Superintendents Act, see section 39-2301.

**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.

**39-2520 Funds received; use; restriction; exception.**

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a municipality that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The municipality shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The municipality shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

**Source:** Laws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3; Laws 2019, LB82, § 16; Laws 2019, LB472, § 9.

**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.
- 39-2808. Purpose of sections.
- 39-2809. Design-build contract; construction manager-general contract; authorized.
- 39-2810. Contracting agency; hire engineering or architectural consultant.
- 39-2811. Guidelines; contents.
- 39-2813. Request for qualifications for design-build proposals; publication; short list created.
- 39-2814. Request for proposals for design-build contract; elements.
- 39-2815. Stipend.
- 39-2816. Submission of proposals; sealed; rank of design-builders; negotiation of contract.
- 39-2817. Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.

## Section

- 39-2818. Request for proposals for construction manager-general contractor contract; elements.
- 39-2819. Submission of proposals; sealed; rank of construction managers; negotiation of contract.
- 39-2820. Contracting agency; cost estimate; conduct contract negotiations.
- 39-2821. Contracts; changes authorized.
- 39-2822. Department; authority for political subdivision projects.
- 39-2823. Insurance.
- 39-2824. Rules and regulations.

**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 a contracting agency'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 a contracting agency 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 contracting agency, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Contracting agency means the department, an eligible county, a city of the metropolitan class, or a city of the primary class using the powers provided under the Transportation Innovation Act;

(7) Department means the Department of Transportation;

(8) Design-build contract means a contract between a contracting agency 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;

(9) Design-builder means the legal entity which proposes to enter into a design-build contract;

(10) Eligible county means (a) a county or (b) a joint entity created by agreement under section 13-804 if a county is a party to the agreement;

(11) 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;

(12) 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;

(13) 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;

(14) 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;

(15) Qualification-based selection process means a process of selecting a construction manager based on qualifications;

(16) Request for proposals means the documentation by which a contracting agency solicits proposals; and

(17) Request for qualifications means the documentation or publication by which a contracting agency solicits qualifications.

**Source:** Laws 2016, LB960, § 2; Laws 2017, LB339, § 173; Laws 2019, LB583, § 2.

### **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.

### **39-2808 Purpose of sections.**

The purpose of sections 39-2808 to 39-2824 is to provide a contracting agency alternative methods of contracting for public projects. The alternative methods of contracting shall be available to a contracting agency for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Transportation Innovation Act shall govern the

design-build and construction manager-general contractor procurement process.

**Source:** Laws 2016, LB960, § 8; Laws 2019, LB583, § 3.

**39-2809 Design-build contract; construction manager-general contract; authorized.**

A contracting agency, in accordance with sections 39-2808 to 39-2824, may solicit and execute a design-build contract or a construction manager-general contractor contract for a public project, other than a project that is primarily resurfacing, rehabilitation, or restoration.

**Source:** Laws 2016, LB960, § 9; Laws 2019, LB583, § 4.

**39-2810 Contracting agency; hire engineering or architectural consultant.**

A contracting agency may hire an engineering or architectural consultant to assist the contracting agency 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 contracting agency 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 2016, LB960, § 10; Laws 2019, LB583, § 5.

**Cross References**

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

**39-2811 Guidelines; contents.**

The department shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. If an eligible county, a city of the metropolitan class, or a city of the primary class intends to proceed with a design-build contract or a construction manager-general contractor contract, the eligible county, city of the metropolitan class, or city of the primary class may adopt the guidelines published by the department. The department's 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 contracting agency will evaluate prospective design-builders and construction managers based on the information submitted to the contracting agency 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 contracting agency 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 2016, LB960, § 11; Laws 2019, LB583, § 6.

**39-2813 Request for qualifications for design-build proposals; publication; short list created.**

(1) A contracting agency 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 contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the contracting agency under section 39-2810 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 contracting agency shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two prospective design-builders, except that if only one design-builder has responded to the request for qualifications, the contracting agency 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 2016, LB960, § 13; Laws 2019, LB583, § 7.

**39-2814 Request for proposals for design-build contract; elements.**

A contracting agency 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 in accordance with section 39-2811. 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 contracting agency;

(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 contracting agency 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 contracting agency 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 contracting agency;

(b) At the time of the design-build proposal, the design-builder must furnish to the contracting agency 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 contracting agency;

(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 contracting agency; 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;

(11) The amount and terms of the stipend required pursuant to section 39-2815; and

(12) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

**Source:** Laws 2016, LB960, § 14; Laws 2019, LB583, § 8.

**Cross References**

Engineers and Architects Regulation Act, see section 81-3401.

**39-2815 Stipend.**

The contracting agency shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall

give the contracting agency 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 contracting agency as disclosed in the request for proposals.

**Source:** Laws 2016, LB960, § 15; Laws 2019, LB583, § 9.

**39-2816 Submission of proposals; sealed; rank of design-builders; negotiation of contract.**

(1) Design-builders shall submit proposals as required by the request for proposals. A contracting agency 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 contracting agency, 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 contracting agency.

(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 contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency other than any stipend for design-builders who have submitted responsive proposals. The contracting agency may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

(4) The contracting agency shall rank the design-builders in order of best value pursuant to the criteria in the request for proposals. The contracting agency may meet with design-builders prior to ranking.

(5) The contracting agency may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the contracting agency and may enter into a design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the contracting agency may terminate negotiations with that design-builder. The contracting agency may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the contracting agency 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 contracting agency is unable to negotiate a satisfactory contract with any of the ranked design-builders, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the design-build process under sections 39-2808 to 39-2824.

**Source:** Laws 2016, LB960, § 16; Laws 2019, LB583, § 10.

**39-2817 Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.**

(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 39-2818 to 39-2820.

(2) A contracting agency 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 contracting agency 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 contracting agency shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the contracting agency 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 2016, LB960, § 17; Laws 2019, LB583, § 11.

**39-2818 Request for proposals for construction manager-general contractor contract; elements.**

A contracting agency 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 in accordance with section 39-2811. 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 contracting agency;

(4) General information about the project which will assist the contracting agency 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 contracting agency. In no case shall the contracting agency allow the

construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

**Source:** Laws 2016, LB960, § 18; Laws 2019, LB583, § 12.

**39-2819 Submission of proposals; sealed; rank of construction managers; negotiation of contract.**

(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 contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency. The contracting agency may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The contracting agency shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The contracting agency may meet with construction managers prior to the ranking.

(5) The contracting agency 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 contracting agency is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the contracting agency may terminate negotiations with that construction manager. The contracting agency may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the contracting agency 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 contracting agency is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under sections 39-2808 to 39-2824.

**Source:** Laws 2016, LB960, § 19; Laws 2019, LB583, § 13.

**39-2820 Contracting agency; cost estimate; conduct contract negotiations.**

(1) Before the construction manager begins any construction services, a contracting agency 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 contracting agency are unable to negotiate a contract, the contracting agency may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the contracting agency shall be eligible to compete in the other contract procurement processes.

**Source:** Laws 2016, LB960, § 20; Laws 2019, LB583, § 14.

**39-2821 Contracts; 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 contracting agency in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

**Source:** Laws 2016, LB960, § 21; Laws 2019, LB583, § 15.

**39-2822 Department; authority for political subdivision projects.**

The department may enter into agreements under sections 39-2808 to 39-2824 to let, design, and construct projects for political subdivisions when any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder or construction manager. The provisions of the Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under sections 39-2808 to 39-2824.

**Source:** Laws 2016, LB960, § 22; Laws 2019, LB583, § 16.

**Cross References**

Political Subdivisions Construction Alternatives Act, see section 13-2901.

**39-2823 Insurance.**

Nothing in sections 39-2808 to 39-2824 shall limit or reduce statutory or regulatory requirements regarding insurance.

**Source:** Laws 2016, LB960, § 23; Laws 2019, LB583, § 17.

**39-2824 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the Transportation Innovation Act. An eligible county, a city of the metropolitan class, or a city of the primary class may adopt a resolution or an ordinance establishing rules to carry out the act.

**Source:** Laws 2016, LB960, § 24; Laws 2019, LB583, § 18.



## CHAPTER 42

### HOUSEHOLDS AND FAMILIES

Article.

3. Divorce, Alimony, and Child Support.
  - (d) Domestic Relations Actions. 42-364 to 42-377.
9. Domestic Violence.
  - (a) Protection from Domestic Abuse Act. 42-903 to 42-926.
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.
- 42-377. Legitimacy of children.

##### (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.

#### 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.

#### **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.

**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.

**42-377 Legitimacy of children.**

Children born to the parties, or to either spouse, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

**Source:** Laws 1972, LB 820, § 31; Laws 1997, LB 229, § 21; Laws 2019, LB427, § 1.

**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.
- 42-924.02. Protection order; forms provided; State Court Administrator; duties.
- 42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.
- 42-926. Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(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)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in 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:

(i) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(ii) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(iii) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(iv) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(v) Ordering the respondent to stay away from any place specified by the court;

(vi) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(vii) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or

(viii) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(b) The petition for a protection order shall state the events and dates or approximate dates of acts constituting the alleged domestic abuse, including the most recent and most severe incident or incidents.

(c) The protection order shall specify to whom relief under this section was granted.

(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)(i) 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 any time within forty-five days before the expiration of the previous protection order, including the date the order expires.

(ii) A protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(A) The petitioner seeks no modification of the order; and

(B)(I) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(II) The respondent indicates that he or she does not contest the renewal.

(iii) Such renewed order shall specify that it is effective for a period of one year to commence on the first calendar day following the expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order 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, except the petitioner, 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; Laws 2019, LB532, § 3.

**42-924.02 Protection order; forms provided; State Court Administrator; duties.**

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard petition and affidavit forms provided for in this section as well as the standard temporary ex parte and final protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final protection order forms shall be the only such forms used in this state.

**Source:** Laws 1989, LB 330, § 13; Laws 1997, LB 393, § 2; Laws 1998, LB 218, § 22; Laws 2019, LB532, § 4.

**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 ten business days after service upon him or her. Upon receipt of a timely 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. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court. 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.

(2) A temporary ex parte order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the temporary ex parte order and:

(a) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(b) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and fails to appear at such hearing; or

(c) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(3) 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. Any notice provided to the respondent shall include notification that a court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If 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.

(4) 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.

(5) 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.

(6) 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.

(7) A court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

**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; Laws 2019, LB532, § 5.

**42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.**

(1) Upon the issuance of a temporary ex parte or final protection order under section 42-925, 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 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 protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection order. If any 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. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the 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 notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

(3) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal data bases for protection order enforcement.

**Source:** Laws 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24; Laws 2012, LB310, § 5; Laws 2019, LB532, § 6.

## 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.

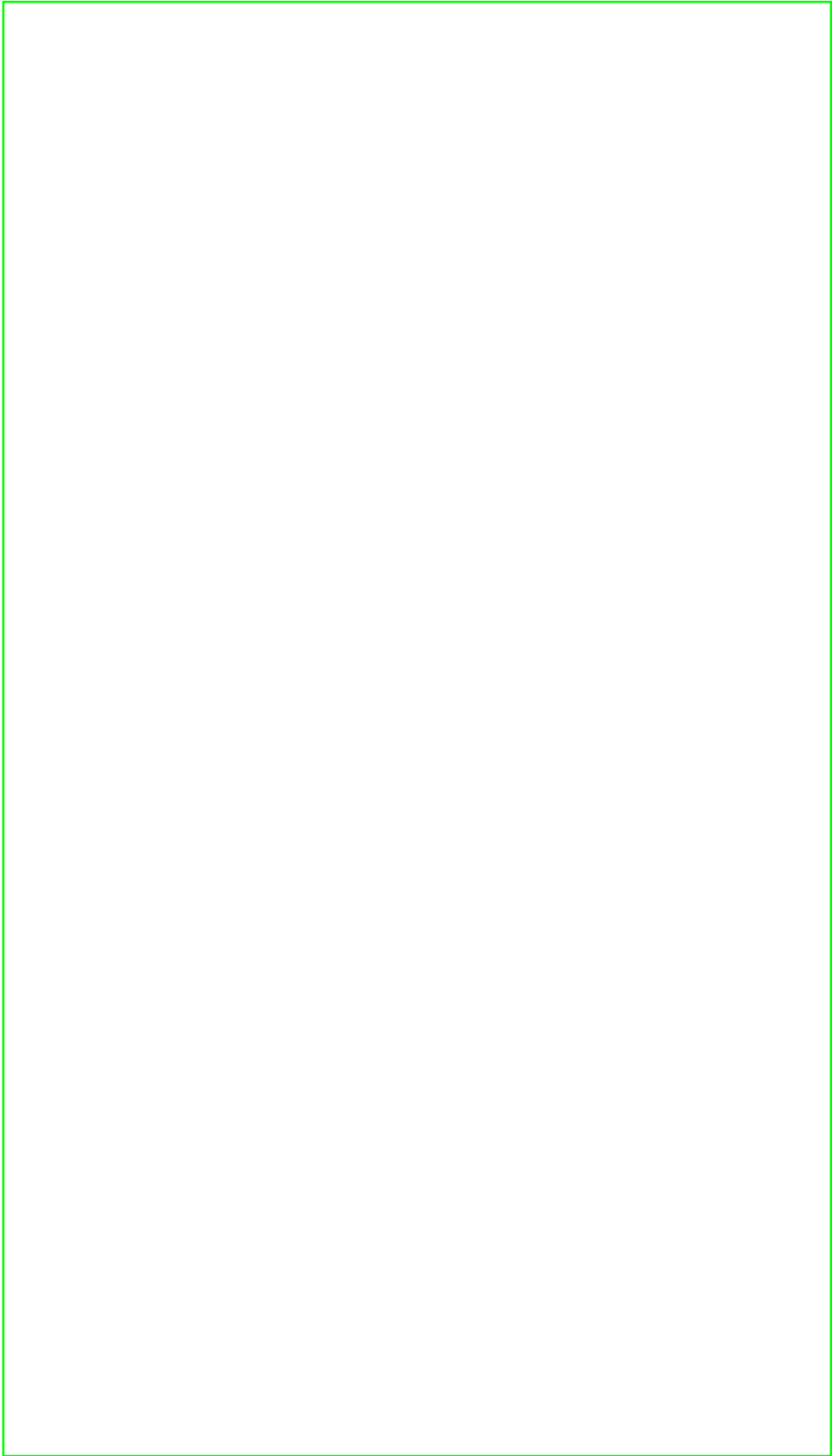
42-1304. Transferred to section 30-705.

**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. 43-245 to 43-247.04.
  - (c) Law Enforcement Procedures. 43-248 to 43-251.02.
  - (d) Preadjudication Procedures. 43-253 to 43-261.01.
  - (e) Prosecution. 43-274 to 43-276.
  - (g) Disposition. 43-283.01 to 43-296.
  - (i) Miscellaneous Provisions. 43-2,108 to 43-2,108.05.
  - (j) Separate Juvenile Courts. 43-2,112 to 43-2,119.
  - (k) Citation and Construction of Code. 43-2,129.
4. Office of Juvenile Services. 43-401 to 43-431.
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. 43-1302 to 43-1318.
  - (b) Transition of Employees. 43-1322. Repealed.
14. Parental Support and Paternity. 43-1411, 43-1411.01.
16. Child Support Referees. 43-1609, 43-1611.
19. Child Abuse Prevention. 43-1903, 43-1906.
21. Age of Majority. 43-2101.
24. Juvenile Services. 43-2401 to 43-2413.
26. Child Care. 43-2606.
29. Parenting Act. 43-2922 to 43-2939.
32. McGruff House. Repealed.
33. Support Enforcement.
  - (e) State Disbursement Unit. 43-3342.03, 43-3342.05.
34. Early Childhood Interagency Coordinating Council. 43-3401.
40. Children's Behavioral Health. 43-4001, 43-4002.
42. Nebraska Children's Commission. 43-4201 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. 43-4502 to 43-4514.
47. Nebraska Strengthening Families Act. 43-4701 to 43-4716.
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 preplacement 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.

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	
43-245.	Terms, defined.
43-246.	Code, how construed.
43-246.02.	Transfer of jurisdiction to district court; bridge order; criteria; records; modification.
43-247.02.	Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.
43-247.03.	Restorative justice practices; confidential; privileged communications.



## JUVENILE CODE

Section	
43-247.04.	Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.
	(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.
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43-254.	Placement or detention pending adjudication; restrictions; assessment of costs.
43-260.01.	Detention; factors.
43-260.04.	Juvenile pretrial diversion program; requirements.
43-260.06.	Juvenile diversion agreement; contents.
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 restorative justice practice or service; transfer; procedures; appeal.
43-275.	Petition, complaint, or restorative justice program consent form; filing; time.
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	(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.
43-287.	Impoundment of license or permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school; not eligible for ignition interlock permit.
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.
43-2,108.01.	Sealing of records; juveniles eligible.
43-2,108.02.	Sealing of records; notice to juvenile; contents.
43-2,108.03.	Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.
43-2,108.04.	Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.
43-2,108.05.	Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.
	(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.

Section

43-2,119. Judges; number; presiding judge.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129. Code, how cited.

## (b) GENERAL PROVISIONS

**43-245 Terms, defined.**

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Alternative to detention means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(4) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(5) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(6) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(7) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(8) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(9) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(10) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(11) Juvenile means any person under the age of eighteen;

(12) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district

courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(13) Juvenile detention facility has the same meaning as in section 83-4,125;

(14) Legal custody has the same meaning as in section 43-2922;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) Physical custody has the same meaning as in section 43-2922;

(20) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Restorative justice means practices, programs, or services that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense. Restorative justice practices may include, but are not limited to, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation;

(22) Restorative justice facilitator means a qualified individual who has been trained to facilitate restorative justice practices. A qualified individual shall be approved by the referring county attorney, city attorney, or juvenile or county court judge. Factors for approval may include, but are not limited to, an individual's education and training in restorative justice principles and practices; experience in facilitating restorative justice sessions; understanding of the necessity to do no harm to either the victim or the person who harmed the victim; and proven commitment to ethical practices;

(23) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(24) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(25) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services;

(26) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

(27) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction; and

(28) Young adult means an individual older than eighteen years of age but under twenty-one years of age.

**Source:** Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3; Laws 2015, LB265, § 2; Laws 2016, LB894, § 1; Laws 2019, LB595, § 23.

**Cross References**

Nebraska Indian Child Welfare Act, see section 43-1501.

**43-246 Code, how construed.**

Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims, or victim surrogates when appropriate, through restorative justice practices and fulfilling the terms of the resulting reparation plan which may require apologies, restitution, community service, or other agreed-upon means of making amends;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

**Source:** Laws 1981, LB 346, § 2; Laws 1982, LB 787, § 1; Laws 1985, LB 255, § 31; Laws 1985, LB 447, § 12; Laws 1996, LB 1001, § 2; Laws 1998, LB 1041, § 21; Laws 1998, LB 1073, § 12; Laws 2010, LB800, § 13; Laws 2019, LB595, § 24.

**Cross References**

Nebraska Indian Child Welfare Act, see section 43-1501.

**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.

**Cross References**

**Parenting Act**, see section 43-2920.

**Uniform Child Custody Jurisdiction and Enforcement Act**, see section 43-1226.

**43-247.02 Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.**

(1) Notwithstanding any other provision of Nebraska law, on and after October 1, 2013, a juvenile court shall not:

(a) Place any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 with the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(b) Commit any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and custody of the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(c) Require the Department of Health and Human Services or the Office of Juvenile Services to supervise any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, other than as allowed under subsection (2) or (3) of this section; or

(d) Require the Department of Health and Human Services or the Office of Juvenile Services to provide, arrange for, or pay for any services for any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party to cases under those subdivisions, other than as allowed under subsection (2) or (3) of this section.

(2) Notwithstanding any other provision of Nebraska law, on and after July 1, 2013, a juvenile court shall not commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center except as part of an order of intensive supervised probation under subsection (1) of section 43-286.

(3) Nothing in this section shall be construed to limit the authority or duties of the Department of Health and Human Services in relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 who were committed to the care and custody of the Department of Health and Human Services prior to October 1, 2013, to the Office of Juvenile Services for community-based services prior to October 1, 2013, or to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The care and custody of such juveniles with the Department of Health and Human Services or the Office of Juvenile Services shall continue in

accordance with the Nebraska Juvenile Code and the Juvenile Services Act as such acts existed on January 1, 2013, until:

- (a) The juvenile reaches the age of majority;
- (b) The juvenile is no longer under the care and custody of the department pursuant to a court order or for any other reason, a guardian other than the department is appointed for the juvenile, or the juvenile is adopted;
- (c) The juvenile is discharged pursuant to section 43-412, as such section existed on January 1, 2013; or
- (d) A juvenile court terminates its jurisdiction of the juvenile.

**Source:** Laws 2013, LB561, § 8; Laws 2020, LB1148, § 9.

Effective date November 14, 2020.

**Cross References**

Juvenile Services Act, see section 43-2401.

**43-247.03 Restorative justice practices; confidential; privileged communications.**

(1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through restorative justice practices. Restorative justice practices may include, but are not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, juvenile victim-offender dialogue, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation. The Office of Dispute Resolution shall be responsible for funding and management for such services provided by approved centers. All discussions taking place during such restorative justice practices, including plea negotiations, shall be confidential and privileged communications as provided in section 25-2914.01.

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan;



(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes; and

(e) Victim youth conferencing means a process in which a restorative justice facilitator meets with the juvenile and the victim, when appropriate, in an effort to convene a dialogue in which the juvenile takes responsibility for his or her actions and the victim or victim surrogate is able to address the juvenile and create a reparation plan agreement, which may include apologies, restitution, community services, or other agreed-upon means of amends.

**Source:** Laws 2008, LB1014, § 38; R.S.1943, (2008), § 43-247.01; Laws 2014, LB464, § 10; Laws 2019, LB595, § 25.

**43-247.04 Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.**

(1) It is the intent of the Legislature to transfer four hundred fifty thousand dollars in General Funds from the Department of Health and Human Services' 2014-15 budget to the office of the State Court Administrator's budget for the purpose of making the State Court Administrator directly responsible for contracting and paying for court-connected prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, victim youth conferencing, juvenile victim-offender dialogue, and other restorative justice practices. Such funds shall be transferred on or before October 15, 2014.

(2) The Department of Health and Human Services shall continue to be responsible for contracting with mediation centers approved by the Office of Dispute Resolution to provide family group conferences, mediation, and related services for non-court-involved and voluntary child welfare or juvenile cases through June 30, 2017, unless extended by the Legislature.

**Source:** Laws 2014, LB464, § 11; Laws 2019, LB595, § 26.

(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.

**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 awaiting 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.

**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 except in case of an emergency as provided in section 43-430;

(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; Laws 2020, LB1140, § 3.  
Operative date August 7, 2020.

#### **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.

#### (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.

**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.

#### **43-260.04 Juvenile pretrial diversion program; requirements.**

A juvenile pretrial diversion program shall:

- (1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:
  - (a) The juvenile's age;
  - (b) The nature of the offense and role of the juvenile in the offense;
  - (c) The number and nature of previous offenses involving the juvenile;
  - (d) The dangerousness or threat posed by the juvenile to persons or property;

or

  - (e) The recommendations of the referring agency, victim, and advocates for the juvenile;
- (2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;



(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07;

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law; and

(9)(a) Respond to a public inquiry in the same manner as if there were no information or records concerning participation in the diversion program. Information or records pertaining to participation in the diversion program shall not be disseminated to any person other than:

(i) A criminal justice agency as defined in section 29-3509;

(ii) The individual who is the subject of the record or any persons authorized by such individual; or

(iii) Other persons or agencies authorized by law.

(b) An individual, a person, or an agency requesting information subject to subdivision (9)(a) of this section shall provide the diversion program with satisfactory verification of his, her, or its identity.

**Source:** Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14; Laws 2019, LB354, § 1.

#### **43-260.06 Juvenile diversion agreement; contents.**

A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

(1) A letter of apology;

(2) Community service, not to be performed during school hours if the juvenile offender is attending school;

(3) Restitution;

(4) Attendance at educational or informational sessions at a community agency;

(5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and

(6) Participation in an appropriate restorative justice practice or service.

**Source:** Laws 2003, LB 43, § 5; Laws 2019, LB595, § 27.

#### **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.

(e) PROSECUTION

**43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; 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, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, 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;
- (iv) Apology, when appropriate, between the juvenile and the victim; and
- (v) Any other areas of agreement.

(f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:

- (i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or
- (ii) Proceed with filing a juvenile court petition or criminal charge.

(g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

- (i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or
- (ii) File a reduced charge as previously agreed when referred as a part of a plea negotiation.

(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; Laws 2019, LB595, § 28.

**43-275 Petition, complaint, or restorative justice program consent form; filing; time.**

Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or restorative justice program consent form must be filed within forty-eight hours excluding nonjudicial days.

**Source:** Laws 1981, LB 346, § 31; Laws 1998, LB 1073, § 21; Laws 2019, LB595, § 29.

**43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources.**

(1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or restorative justice, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (j) whether the victim or juvenile agree to participate in restorative justice; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

**Source:** Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17; Laws 2015, LB482, § 5; Laws 2019, LB595, § 30.

(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 or pursuant to subdivision (8) of section 43-247 for a child whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years 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 concur-

rently 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; Laws 2019, LB600, § 1.

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) 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 restorative justice programs or 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:

(i) Place the juvenile on probation subject to the supervision of a probation officer; or

(ii) 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) 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:

(i) 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;

(ii) The Office of Juvenile Services shall be served with a copy of such motion and shall be a party to the case for all matters related to the juvenile’s commitment to, placement with, or discharge from the Office of Juvenile Services; and

(iii) 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:

(A) All levels of probation supervision have been exhausted;

(B) All options for community-based services have been exhausted; and

(C) 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;

(c) After the hearing, the court may, as a condition of an order of intensive supervised probation, commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated in

compliance with state law. 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;

(d) 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; and

(e) 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.

(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.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may order the juvenile to be assessed for referral to participate in a restorative justice program. Factors that the judge may consider for such referral include, but are not limited to: The juvenile's age, intellectual capacity, and living environment; the ages of others who were part of the offense; the age and capacity of the victim; and the nature of the case.

(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; Laws 2019, LB595, § 31; Laws 2020, LB1148, § 10.  
Effective date November 14, 2020.

**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.

**43-287 Impoundment of license or permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school; not eligible for ignition interlock permit.**

(1) When a juvenile is adjudged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the juvenile court may:

(a) If such juvenile holds any license or permit issued under the Motor Vehicle Operator's License Act, impound any such license or permit for thirty days; or

(b) If such juvenile does not have a permit or license issued under the Motor Vehicle Operator's License Act, prohibit such juvenile from obtaining any permit or any license pursuant to the act for which such juvenile would otherwise be eligible until thirty days after the date of such order.

(2) A copy of an abstract of the juvenile court's 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 subsection (1) of this section. If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of section 60-4,108.

(3) When a juvenile is adjudged to be a juvenile described in subdivision (3)(a) of section 43-247 for excessive absenteeism from school, the juvenile court may issue the parents or guardians of such juvenile a fine not to exceed five hundred dollars for each offense or order such parents or guardians to complete specified hours of community service. For community service ordered under this subsection, the juvenile court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

(4) A juvenile who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196,

60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

**Source:** Laws 2010, LB800, § 24; Laws 2012, LB751, § 5; Laws 2019, LB269, § 1.

**Cross References**

**Motor Vehicle Operator's License Act**, see section 60-462.

**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.

**Cross References**

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.

**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.

**43-2,108.01 Sealing of records; juveniles eligible.**

(1) Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney:

(a) Declined to file a juvenile petition or criminal complaint;

(b) Offered juvenile pretrial diversion, mediation, or restorative justice to the juvenile under the Nebraska Juvenile Code;

(c) Filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247;

(d) Filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia;

(e) Filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordi-

nance, other than for a traffic offense when all offenses in the case are waivable offenses; or

(f) Filed a criminal complaint in county or district court for a felony offense under state law or a city or village ordinance that was subsequently transferred to juvenile court for ongoing jurisdiction.

(2) The changes made by Laws 2019, LB354, to the relief set forth in sections 43-2,108.03 to 43-2,108.05 shall apply to all persons described in this section, as amended by Laws 2019, LB354, and Laws 2020, LB1148, for offenses occurring prior to, on, or after September 1, 2019.

**Source:** Laws 2010, LB800, § 26; Laws 2011, LB463, § 6; Laws 2019, LB354, § 2; Laws 2019, LB595, § 32; Laws 2020, LB1148, § 11.  
Effective date November 14, 2020.

#### **43-2,108.02 Sealing of records; notice to juvenile; contents.**

(1) By January 1, 2020, the Supreme Court shall promulgate a written notice that:

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has satisfactorily completed the diversion, mediation, restorative justice, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court diversion program, probation ordered by the court, or sentence ordered by the court;

(b) States in developmentally appropriate language that, if the record is not sealed as provided in subdivision (1)(a) of this section, the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner; and

(c) Explains in developmentally appropriate language what sealing the record means.

(2) For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall attach a copy of the notice to any juvenile petition or criminal complaint.

**Source:** Laws 2010, LB800, § 27; Laws 2011, LB463, § 7; Laws 2019, LB354, § 3; Laws 2019, LB595, § 33.

#### **43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.**

(1)(a) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed. The county attorney or city attorney shall provide written notification to the juvenile that no juvenile petition or criminal

complaint was filed and provide the juvenile with the notice described in section 43-2,108.02.

(b) If a juvenile described in subdivision (1)(a) of this section discovers that his or her record was not automatically sealed, such juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (1)(a) of this section.

(2)(a) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion, mediation, or restorative justice, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion, mediation, or restorative justice. At the time the juvenile is offered diversion, mediation, or restorative justice, the county attorney or city attorney shall provide the notice described in section 43-2,108.02 to the juvenile. The county attorney or city attorney shall also provide written notification to the juvenile of his or her satisfactory or unsatisfactory completion of diversion, mediation, or restorative justice.

(b) If a juvenile who was satisfactorily discharged from diversion, mediation, or restorative justice discovers that his or her record was not automatically sealed, the juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (2)(a) of this section.

(3)(a) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but the case was dismissed by the court, the court shall seal the record as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (3)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(4)(a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(5) A government agency or court that receives notice under subdivision (1)(a) or (2)(a) of this section shall, upon such receipt, immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, mediation, or restorative justice.

(6) When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court. The motion shall set forth the facts supporting the argument that the individual who

is the subject of the juvenile petition or criminal complaint has been satisfactorily rehabilitated.

**Source:** Laws 2010, LB800, § 28; Laws 2011, LB463, § 8; Laws 2019, LB354, § 4; Laws 2019, LB595, § 34.

**43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.**

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice. Any such response shall be served on all parties to the case. If the response objects to the sealing of a record, such response shall specify which factor or factors under subsection (5) of this section form the basis for the objection and shall set forth the facts supporting any argument that the juvenile has not been satisfactorily rehabilitated.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to the sealing of the record, the court shall order that the record of the juvenile under consideration be sealed.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within sixty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court shall order the record of the juvenile that is the subject of the motion be sealed if it finds by a preponderance of the evidence that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(a) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, restorative justice, probation, supervision, other treatment or rehabilitation program, or sentence;

(b) The education and employment history of the juvenile; and

(c) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to

seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

**Source:** Laws 2010, LB800, § 29; Laws 2011, LB463, § 9; Laws 2019, LB354, § 5; Laws 2019, LB595, § 35.

**43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.**

(1) If the court orders the record of a juvenile sealed, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile using developmentally appropriate language what sealing the record means. The explanation shall be given verbally if the juvenile is present in the court at the time the court issues the sealing order and by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order. The sealing order shall include contact information for each government agency subject to the sealing order.

(2) The effect of having a record sealed is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to the individual who is the subject of the sealed record and any persons authorized by such individual, law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal

defendants, to a judge making a determination whether to transfer a case to or from juvenile court, to any attorney representing the subject of the sealed record, and to the Inspector General of Nebraska Child Welfare pursuant to an investigation conducted under the Office of Inspector General of Nebraska Child Welfare Act. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) By the individual who is the subject of the sealed record and by persons authorized by such individual. The individual shall provide satisfactory verification of his or her identity;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court or the State Court Administrator, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if the individual whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) 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. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the depart-

ment’s web site to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who knowingly violates this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24; Laws 2015, LB265, § 6; Laws 2016, LB954, § 2; Laws 2019, LB354, § 6.

**Cross References**

Child Care Licensing Act, see section 71-1908.  
Children’s Residential Facilities and Placing Licensure Act, see section 71-1924.  
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

(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.

**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.

**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.

#### ARTICLE 4

#### OFFICE OF JUVENILE SERVICES

##### Section

- 43-401. Act, how cited.
- 43-403. Terms, defined.
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- 43-405. Office of Juvenile Services; administrative duties.
- 43-406. Office of Juvenile Services; individualized treatment plan; case classification and management; requirements.
- 43-407. Office of Juvenile Services; programs and treatment services; individualized treatment plan; placement; procedure; case management and coordination process; funding utilization; intent; evidence-based services, policies, practices, and procedures; report; contents; Executive Board of Legislative Council; powers.
- 43-408. Office of Juvenile Services; committing court; powers and duties; commitment review; hearing; annual review of commitment and placement; review status; when.
- 43-410. Juvenile absconding; authority to apprehend.
- 43-414. Repealed. Laws 2020, LB1188, § 21.
- 43-415. Repealed. Laws 2020, LB1188, § 21.
- 43-416. Repealed. Laws 2020, LB1188, § 21.
- 43-417. Discharge from youth rehabilitation and treatment center; considerations.
- 43-418. Repealed. Laws 2020, LB1188, § 21.
- 43-419. Repealed. Laws 2020, LB1188, § 21.
- 43-420. Hearing officer; requirements.
- 43-421. Repealed. Laws 2020, LB1188, § 21.
- 43-422. Repealed. Laws 2020, LB1188, § 21.
- 43-423. Repealed. Laws 2020, LB1188, § 21.
- 43-425. Community and Family Reentry Process; created; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.
- 43-426. Visitation and communication; use as consequence or sanction; prohibited.
- 43-427. Youth rehabilitation and treatment centers; five-year operations plan; report; limitation on use of facilities.
- 43-428. Youth rehabilitation and treatment center; emergency plan.
- 43-429. Emergency plan; requirements.
- 43-430. Criminal detention facility; juvenile detention facility; emergency use.
- 43-431. Transportation of juveniles; policies and procedures; applicable to private contractor.

##### **43-401 Act, how cited.**

Sections 43-401 to 43-431 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

**Source:** Laws 1998, LB 1073, § 33; Laws 2012, LB972, § 4; Laws 2020, LB1140, § 4; Laws 2020, LB1188, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1140, section 4, with LB1188, section 1, to reflect all amendments.

**Note:** Changes made by LB1140 became operative August 7, 2020. Changes made by LB1188 became effective November 14, 2020.

#### **43-403 Terms, defined.**

For purposes of the Health and Human Services, Office of Juvenile Services Act:

(1) Aftercare means the control, supervision, and care exercised over juveniles who have been discharged from commitment;

(2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment at a youth rehabilitation and treatment center identified in the court order;

(3) Community supervision means the control, supervision, and care exercised over juveniles when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;

(4) Emergency means a public health emergency or a situation, including fire, flood, tornado, natural disaster, or damage to a youth rehabilitation and treatment center, that renders the youth rehabilitation and treatment center uninhabitable. Emergency does not include inadequate staffing;

(5) Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan; and

(6) Treatment means the type of supervision, care, and rehabilitative services provided for the juvenile at a youth rehabilitation and treatment center operated by the Office of Juvenile Services.

**Source:** Laws 1998, LB 1073, § 35; Laws 2020, LB1140, § 5; Laws 2020, LB1188, § 2.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1140, section 5, with LB1188, section 2, to reflect all amendments.

**Note:** Changes made by LB1140 became operative August 7, 2020. Changes made by LB1188 became effective November 14, 2020.

#### **43-404 Office of Juvenile Services; created; powers and duties.**

There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of the youth rehabilitation and treatment centers. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may subcontract with a state agency or private provider to provide services related to the facilities and programs of the Office of Juvenile Services.

**Source:** Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp.,1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109; Laws 2013, LB561, § 26; Laws 2020, LB1188, § 3.

Effective date November 14, 2020.

#### **43-405 Office of Juvenile Services; administrative duties.**

The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, treatment, rehabilitation, transfer, discharge, and evaluation of juveniles committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles committed to facilities of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and submit electronically an annual report of its findings to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reductions in commitments, placements, and evaluations;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling for juveniles committed to the office; and

(9) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

**Source:** Laws 1998, LB 1073, § 37; Laws 2012, LB782, § 44; Laws 2012, LB972, § 5; Laws 2012, LB1160, § 12; Laws 2013, LB222, § 7; Laws 2013, LB561, § 27; Laws 2020, LB1188, § 4.  
Effective date November 14, 2020.

**43-406 Office of Juvenile Services; individualized treatment plan; case classification and management; requirements.**

The Office of Juvenile Services shall utilize:

(1) Evidence-based and validated risk and needs assessment instruments for use in determining the individualized treatment plan for each juvenile committed to the office;

(2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment;

(3) Case management for all juveniles committed to the office; and

(4) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

**Source:** Laws 1994, LB 988, § 15; Laws 1995, LB 371, § 27; Laws 1996, LB 1141, § 1; Laws 1997, LB 307, § 229; Laws 1997, LB 882,

§ 12; R.S.Supp.,1997, § 83-925.07; Laws 1998, LB 1073, § 38; Laws 2013, LB561, § 28; Laws 2020, LB1188, § 5.  
Effective date November 14, 2020.

**43-407 Office of Juvenile Services; programs and treatment services; individualized treatment plan; placement; procedure; case management and coordination process; funding utilization; intent; evidence-based services, policies, practices, and procedures; report; contents; Executive Board of Legislative Council; powers.**

(1) The Office of Juvenile Services shall design and make available programs and treatment services through youth rehabilitation and treatment centers. The programs and treatment services shall be evidence-based and based upon the individual or family evaluation process using evidence-based, validated risk and needs assessments to create an individualized treatment plan. The treatment plan shall be developed within fourteen days after admission and provided to the committing court and interested parties. The court may, on its own motion or upon the motion of an interested party, set a hearing to review the treatment plan.

(2) A juvenile may be committed by a court to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated and utilized in compliance with state law pursuant to a hearing described in subdivision (1)(b)(iii) of section 43-286. The office shall not change a juvenile's placement except as provided in this section. If a juvenile placed at a youth rehabilitation and treatment center is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the Office of Juvenile Services may arrange for such treatment to be provided at the Hastings Regional Center or may transition the juvenile to another inpatient or subacute residential treatment facility licensed as a treatment facility in the State of Nebraska and shall provide notice of the change in placement pursuant to subsection (3) of this section. Except in a case requiring emergency admission to an inpatient facility, the juvenile shall not be discharged by the Office of Juvenile Services until the juvenile has been returned to the court for a review of his or her conditions of probation and the juvenile has been transitioned to the clinically appropriate level of care. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes

in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2020, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(3) When the Office of Juvenile Services has arranged for treatment of a juvenile as provided in subsection (2) of this section, the office shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including any parent or guardian of the juvenile, at least seven days before the placement of the juvenile is changed from the order of the committing court. 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 change in placement and may order the change be stayed until the completion of the hearing.

(4)(a) The Office of Juvenile Services shall provide evidence-based services and operate the youth rehabilitation and treatment centers in accordance with evidence-based policies, practices, and procedures. On December 15 of each year, the office shall electronically submit to the Governor, the Legislature, and the Chief Justice of the Supreme Court, a comprehensive report of the evidence-based services, policies, practices, and procedures by which such centers operate, and efforts the office has taken to ensure fidelity to evidence-based models. The report may be attached to preexisting reporting duties. The report shall include at a minimum:

(i) The percentage of juveniles being supervised in accordance with evidence-based practices;

(ii) The percentage of state funds expended by each respective department for programs that are evidence-based, and a list of all programs which are evidence-based;

(iii) Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and

(iv) Recommendations of the office for any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.

(b) Each report and executive summary shall be available to the general public on the web site of the office.

(c) The Executive Board of the Legislative Council may request the Consortium for Crime and Justice Research and Juvenile Justice Institute at the

University of Nebraska at Omaha to review, study, and make policy recommendations on the reports assigned by the executive board.

**Source:** Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4; Laws 2013, LB561, § 29; Laws 2014, LB464, § 27; Laws 2020, LB1148, § 12; Laws 2020, LB1188, § 6. Effective date November 14, 2020.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1148, section 12, with LB1188, section 6, to reflect all amendments.

**Cross References**

**Special Education Act**, see section 79-1110.

**43-408 Office of Juvenile Services; committing court; powers and duties; commitment review; hearing; annual review of commitment and placement; review status; when.**

(1) Whenever any juvenile is committed to the Office of Juvenile Services, the juvenile shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court may order placement at a youth rehabilitation and treatment center for a juvenile committed to the Office of Juvenile Services following a commitment hearing pursuant to subdivision (1)(b)(iii) of section 43-286. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services, and the office shall provide the court and parties of record with the initial treatment plan and monthly updates regarding the progress of the juvenile.

(3) In addition to the hearings set forth in section 43-285, during a juvenile's term of commitment, any party may file a motion for commitment review to bring the case before the court for consideration of the juvenile's commitment to a youth rehabilitation and treatment center. A hearing shall be scheduled no later than thirty days after the filing of such motion. No later than five days prior to the hearing, the office shall provide information to the parties regarding the juvenile's individualized treatment plan and progress. A representative of the office or facility shall be physically present at the hearing to provide information to the court unless the court allows the representative to appear telephonically or by video. The juvenile and the juvenile's parent or guardian shall have the right to be physically present at the hearing. The court may enter such orders regarding the juvenile's care and treatment as are necessary and in the best interests of the juvenile, including an order for early discharge from commitment when appropriate. In entering an order for early discharge from commitment to intensive supervised probation in the community, the court shall consider to what extent:

(a) The juvenile has completed the goals of the juvenile's individualized treatment plan or received maximum benefit from institutional treatment;

(b) The juvenile would benefit from continued services under community supervision;

(c) The juvenile can function in a community setting with appropriate supports; and

(d) There is reason to believe that the juvenile will not commit further violations of law and will comply with the terms of intensive supervised probation.

(4) Each juvenile committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center shall also be entitled to an annual review of such commitment and placement for as long as the juvenile remains so committed and placed. At an annual review hearing, the court shall consider the factors described in subsection (3) of this section to assess the juvenile's progress and determine whether commitment remains in the best interests of the juvenile.

(5) If a juvenile is placed in detention while awaiting placement at a youth rehabilitation and treatment center and the placement has not occurred within fourteen days, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered a treatment service.

**Source:** Laws 1996, LB 1044, § 962; R.S.Supp., 1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40; Laws 2013, LB561, § 30; Laws 2020, LB1148, § 13; Laws 2020, LB1188, § 7.  
Effective date November 14, 2020.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1148, section 13, with LB1188, section 7, to reflect all amendments.

**43-410 Juvenile absconding; authority to apprehend.**

(1) Any peace officer or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the youth rehabilitation and treatment center or an appropriate juvenile detention facility or staff secure juvenile facility.

(2) For purposes of this section, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles at a youth rehabilitation and treatment center or security staff who has received training in apprehension techniques and procedures.

**Source:** Laws 1998, LB 1073, § 42; Laws 2013, LB561, § 31; Laws 2020, LB1188, § 8.  
Effective date November 14, 2020.

**43-414 Repealed. Laws 2020, LB1188, § 21.**

**43-415 Repealed. Laws 2020, LB1188, § 21.**

**43-416 Repealed. Laws 2020, LB1188, § 21.**

**43-417 Discharge from youth rehabilitation and treatment center; considerations.**

In determining whether to discharge a juvenile from a youth rehabilitation and treatment center, the Office of Juvenile Services shall consider whether (1) the juvenile has completed the goals of his or her individualized treatment plan or received maximum benefit from institutional treatment, (2) the juvenile would benefit from continued services under community supervision, (3) the



juvenile can function in a community setting, (4) there is reason to believe that the juvenile will not commit further violations of law, and (5) there is reason to believe that the juvenile will comply with the conditions of probation.

**Source:** Laws 1998, LB 1073, § 49; Laws 2013, LB561, § 37; Laws 2020, LB1188, § 9.  
Effective date November 14, 2020.

**43-418 Repealed. Laws 2020, LB1188, § 21.**

**43-419 Repealed. Laws 2020, LB1188, § 21.**

**43-420 Hearing officer; requirements.**

Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

**Source:** Laws 1998, LB 1073, § 52; Laws 2013, LB561, § 40; Laws 2020, LB1188, § 10.  
Effective date November 14, 2020.

**43-421 Repealed. Laws 2020, LB1188, § 21.**

**43-422 Repealed. Laws 2020, LB1188, § 21.**

**43-423 Repealed. Laws 2020, LB1188, § 21.**

**43-425 Community and Family Reentry Process; created; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.**

(1) The Community and Family Reentry Process is hereby created. This process is created in order to reduce recidivism and promote safe and effective reentry for the juvenile and his or her family to the community from the juvenile justice system.

(2) While a juvenile is committed to a youth rehabilitation and treatment center, family team meetings shall be conducted in person or via videoconferencing at least once per month with the juvenile's support system to discuss the juvenile's transition back to the community. A juvenile's support system should be made up of any of the following: The juvenile himself or herself, any immediate family members or guardians, informal and formal supports, the juvenile's guardian ad litem appointed by the court, the juvenile's probation officer, Office of Juvenile Services personnel employed by the facility, and any additional personnel as appropriate. Once developed, individualized reentry plans should be discussed at the family team meetings with the juvenile and other members of the juvenile's support system and shall include discussions on the juvenile's placement after leaving the facility. The probation officer and the Office of Juvenile Services personnel should discuss progress and needs of the

juvenile and should help the juvenile follow his or her individual reentry plan to help with his or her transition back to the community.

(3) Within sixty days prior to discharge from a youth rehabilitation and treatment center, or as soon as possible if the juvenile's remaining time at the youth rehabilitation and treatment center is less than sixty days, an evidence-based risk screening and needs assessment should be conducted on the juvenile in order to determine the juvenile's risk of reoffending and the juvenile's individual needs upon reentering the community.

(4) Individualized reentry plans shall be developed with input from the juvenile and his or her support system in conjunction with a risk assessment process. Individualized reentry plans shall be finalized thirty days prior to the juvenile leaving the youth rehabilitation and treatment center or as soon as possible if the juvenile's remaining time at the center is less than thirty days. Individualized reentry plans should include specifics about the juvenile's placement upon return to the community, an education transition plan, a treatment plan with any necessary appointments being set prior to the juvenile leaving the center, and any other formal and informal supports for the juvenile and his or her family. The district probation officer and Office of Juvenile Services personnel shall review the individualized reentry plan and the expected outcomes as a result of the plan with the juvenile and his or her support system within thirty days prior to the juvenile's discharge from the center.

(5) The probation officer shall have contact with the juvenile and the juvenile's support system within forty-eight hours after the juvenile returns to the community and continue to assist the juvenile and the juvenile's support system in implementing and following the individualized reentry plan and monitoring the juvenile's risk through ongoing assessment updates.

(6) The Office of Probation Administration shall:

(a) Establish an evidence-based reentry process that utilizes risk assessment to determine the juvenile's supervision level upon return to the community;

(b) Establish supervision strategies based on risk levels of the juvenile and supervise accordingly, with ongoing reassessment to assist in determining eligibility for release from probation;

(c) Develop a formal matrix of graduated sanctions to be utilized prior to requesting the county attorney to file for probation revocation; and

(d) Provide training to its workers on risk-based supervision strategies, motivational interviewing, family engagement, community-based resources, and other evidence-based reentry strategies.

**Source:** Laws 2013, LB561, § 54; Laws 2014, LB464, § 29; Laws 2020, LB1188, § 11.

Effective date November 14, 2020.

**43-426 Visitation and communication; use as consequence or sanction; prohibited.**

In-person visitation and other forms of communication, including telephone calls and electronic communication, with a juvenile's relatives, including, but not limited to, parents, guardians, grandparents, siblings, and children, shall not be limited or prohibited as a consequence or sanction.

**Source:** Laws 2020, LB1188, § 12.

Effective date November 14, 2020.

**43-427 Youth rehabilitation and treatment centers; five-year operations plan; report; limitation on use of facilities.**

(1) The Department of Health and Human Services shall develop a five-year operations plan for the youth rehabilitation and treatment centers and submit such operations plans electronically to the Health and Human Services Committee of the Legislature on or before March 15, 2021.

(2) The operations plan shall be developed with input from key stakeholders and shall include, but not be limited to:

(a) A description of the population served at each youth rehabilitation and treatment center;

(b) An organizational chart of supervisors and operations staff. The operations plan shall not allow for administrative staff to have oversight over more than one youth rehabilitation and treatment center and shall not allow for clinical staff to have responsibility over more than one youth rehabilitation and treatment center;

(c) Staff who shall be centralized offsite or managed onsite, including facility and maintenance staff;

(d) A facility plan that considers taxpayer investments already made in the facility and the community support and acceptance of the juveniles in the community surrounding the youth rehabilitation and treatment center;

(e) A description of each rehabilitation program offered at the youth rehabilitation and treatment center;

(f) A description of each mental health treatment plan offered at the youth rehabilitation and treatment center;

(g) A description of reentry and discharge planning;

(h) A staffing plan that ensures adequate staffing;

(i) An education plan developed in collaboration with the State Department of Education;

(j) A capital improvements budget;

(k) An operating budget;

(l) A disaster recovery plan;

(m) A plan to segregate the juveniles by gender on separate campuses;

(n) A parenting plan for juveniles placed in a youth rehabilitation and treatment center who are parenting;

(o) A statement of the rights of juveniles placed at the youth rehabilitation and treatment centers, including a right to privacy, and the rights of parents or guardians;

(p) Quality and outcome measurements for tracking outcomes for juveniles when they are discharged from the youth rehabilitation and treatment center, including an exit survey of such juveniles;

(q) Key performance indicators to be included in the annual report required under this section;

(r) A requirement for trauma-informed training provided to staff;

(s) Methods and procedures for investigations at the youth rehabilitation and treatment center; and

(t) A grievance process for juveniles placed at the youth rehabilitation and treatment centers.

(3) The department shall submit a report electronically to the Clerk of the Legislature on or before December 15, 2021, and each December 15 thereafter regarding such operations plan and key performance indicators.

(4) The department shall not establish a new youth rehabilitation and treatment center or establish or move a youth rehabilitation and treatment center to a new or existing state or private facility until March 30, 2021, after the completion of the planning process required under this section. Youth committed to the Office of Juvenile Services and residing at a youth rehabilitation and treatment center may be moved to an existing state or private facility on a temporary basis in the event of an emergency, pursuant to the emergency plans created under section 43-428, and in compliance with the requirements and restrictions in sections 43-429 and 43-430.

**Source:** Laws 2020, LB1140, § 2.

Operative date August 7, 2020.

**43-428 Youth rehabilitation and treatment center; emergency plan.**

(1) The Department of Health and Human Services shall develop an emergency plan for the Youth Rehabilitation and Treatment Center-Geneva, the Youth Rehabilitation and Treatment Center-Kearney, and any other facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law.

(2) Each emergency plan shall:

(a) Identify and designate temporary placement facilities for the placement of juveniles in the event a youth rehabilitation and treatment center must be evacuated due to an emergency as defined in section 43-403. The administrator of a proposed temporary placement facility shall consent to be designated as a temporary placement facility in the emergency plan. A criminal detention facility or a juvenile detention facility shall only be designated as a temporary placement facility pursuant to section 43-430;

(b) Identify barriers to implementation of an effective emergency plan, including necessary administrative or legislative changes;

(c) Include procedures for the Office of Juvenile Services to provide reliable, effective, and timely notification that an emergency plan is to be implemented to:

(i) Staff at the youth rehabilitation and treatment center where the emergency plan is implemented and the administrator and staff at the temporary placement facility;

(ii) Juveniles placed at the youth rehabilitation and treatment center;

(iii) Families and legal guardians of juveniles placed at the youth rehabilitation and treatment center;

(iv) The State Court Administrator, in a form and manner prescribed by the State Court Administrator;

(v) The committing court of each juvenile placed at the youth rehabilitation and treatment center;

(vi) The chairperson of the Health and Human Services Committee of the Legislature; and

(vii) The office of Public Counsel and the office of Inspector General of Nebraska Child Welfare;

(d) Detail the plan for transportation of juveniles to a temporary placement facility; and

(e) Include methods and schedules for implementing the emergency plan.

(3) Each emergency plan shall be developed on or before December 15, 2020.

**Source:** Laws 2020, LB1140, § 6.

Operative date August 7, 2020.

#### **43-429 Emergency plan; requirements.**

(1) The Department of Health and Human Services shall ensure that the administrator of each temporary placement facility described in an emergency plan required under section 43-428 consents to the temporary placement of juveniles placed in such facility pursuant to the emergency plan. Prior to inclusion in an emergency plan as a temporary placement facility, the department and the administrator of the temporary placement facility shall agree on a cost-reimbursement plan for the temporary placement of juveniles at such facility.

(2) If an emergency plan required under section 43-428 is implemented, the Office of Juvenile Services shall, at least twenty-four hours prior to implementation, if practical, and otherwise within twenty-four hours after implementation of such emergency plan, notify the persons and entities listed in subdivision (2)(c) of section 43-428.

**Source:** Laws 2020, LB1140, § 7.

Operative date August 7, 2020.

#### **43-430 Criminal detention facility; juvenile detention facility; emergency use.**

In the event of an emergency and only after all other temporary placement options have been exhausted, the Office of Juvenile Services may provide for the placement of a juvenile for a period not to exceed seven days at a criminal detention facility, if allowed by law, or a juvenile detention facility, as such terms are defined in section 83-4,125.

**Source:** Laws 2020, LB1140, § 8.

Operative date August 7, 2020.

#### **43-431 Transportation of juveniles; policies and procedures; applicable to private contractor.**

Policies and procedures of the Department of Health and Human Services regarding the transportation of juveniles placed at the youth rehabilitation and treatment centers shall apply to any private contractor utilized by the Office of Juvenile Services to transport juveniles placed at the youth rehabilitation and treatment centers.

**Source:** Laws 2020, LB1140, § 10.

Operative date November 14, 2020.

## 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.

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.

**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.

**ARTICLE 13  
FOSTER CARE**

(a) FOSTER CARE REVIEW ACT

- Section 43-1302. Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.
- 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.
- 43-1311.03. Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.
- 43-1318. Act, how cited.

(b) TRANSITION OF EMPLOYEES

- 43-1322. Repealed. Laws 2017, LB225, § 20.

(a) FOSTER CARE REVIEW ACT

**43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.**

(1) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, the Office of Probation Administration, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the Foster Care Review Office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (a) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (b) make policy recommendations.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. Three members shall be local

board members, one member shall have data analysis experience, and one member shall be a resident of the state who is representative of the public at large. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies from the same category as the vacated position to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

**Source:** Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33; Laws 2015, LB265, § 8; Laws 2020, LB381, § 30.  
Operative date January 1, 2021.

**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.

**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.

**43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.**

(1) When a child placed in foster care turns fourteen years of age or enters foster care and is at least fourteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to successful adulthood. Any revision or addition to such proposal shall also be made in consultation with the child. The transition proposal shall be personalized based on the child's needs and shall describe the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act. The transition proposal shall include, but not be limited to, the following needs and the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act:

- (a) Education;
- (b) Employment services and other workforce support;
- (c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;
- (d) Behavioral health treatment and support needs and access to such treatment and support;
- (e) Financial assistance, including education on credit card financing, banking, and other services;
- (f) Housing;
- (g) Relationship development and permanent connections;

(h) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system; and

(i) Information, planning, and assistance to obtain a driver's license as allowed under state law and consistent with subdivision (9)(b)(iv) of this section, including, but not limited to, providing the child with a copy of a driver's manual, identifying driver safety courses and resources to access a driver safety course, and identifying potential means by which to access a motor vehicle for such purposes.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child. As provided in the Nebraska Strengthening Families Act, one of the individuals selected by the child may be designated as the child's advisor and, as necessary, advocate for the child with respect to the application of the reasonable and prudent parent standard and for the child on normalcy activities. The department may reject an individual selected by the child to be a member of the team if the department has good cause to believe the individual would not act in the best interests of the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court. The court shall determine whether the transition proposal includes the services needed to assist the child to make the transition from foster care to a successful adulthood.

(4) The transition proposal shall document what efforts were made to involve and engage the child in the development of the transition proposal and any revisions or additions to the transition proposal. As provided in the Nebraska Strengthening Families Act, the court shall ask the child, in an age or developmentally appropriate manner, about his or her involvement in the development of the transition proposal and any revisions or additions to such proposal. As provided in the Nebraska Strengthening Families Act, the court shall make a finding as to the child's involvement in the development of the transition proposal and any revisions or additions to such proposal.

(5) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(6) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(7) The department shall provide without cost a copy of any consumer report as defined in 15 U.S.C. 1681a(d), as such section existed on January 1, 2016, pertaining to the child each year until the child is discharged from care and assistance, including when feasible, from the child's guardian ad litem, in interpreting and resolving any inaccuracies in the report as provided in the Nebraska Strengthening Families Act.

(8)(a) Any child who is adjudicated to be a juvenile described in (i) subdivision (3)(a) of section 43-247 and who is in an out-of-home placement or (ii) subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years, shall receive information regarding the Young



Adult Bridge to Independence Act and the bridge to independence program available under the act.

(b) The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to participate in the program. The notice shall include information about eligibility and requirements to participate in the program, the extended services and support that young adults are eligible to receive under the program, and how young adults can be a part of the program. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney.

(c) The department shall disseminate this information to any child who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement at sixteen years of age and any child who was adjudicated to be a juvenile under subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years. The department shall disseminate this information to any such child yearly thereafter until such child attains the age of nineteen years and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(9)(a) The department shall provide the child with the documents, information, records, and other materials described in subdivision (9)(b) of this section, (i) if the child is leaving foster care, on or before the date the child reaches eighteen or nineteen years of age or twenty-one years of age if the child participates in the bridge to independence program, and (ii) at the age or as otherwise prescribed in subdivision (9)(b) of this section.

(b) The department shall provide the child with:

(i) A certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card;

(ii) Health insurance information and all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(iii) A copy of the child's medical records;

(iv) A driver's license or identification card issued by a state in accordance with the requirements of section 202 of the REAL ID Act of 2005, as such section existed on January 1, 2016, and when requested by a child fourteen years of age or older, all documents necessary to obtain such license or card;

(v) A copy of the child's educational records;

(vi) A credit report check;

(vii) Contact information, with permission, for family members, including siblings, with whom the child can maintain a safe and appropriate relationship, and other supportive adults;

(viii) A list of local community resources, including, but not limited to, support groups, health clinics, mental and behavioral health and substance abuse treatment services and support, pregnancy and parenting resources, and employment and housing agencies;

(ix) Written information, including, but not limited to, contact information, for disability resources or benefits that may assist the child as an adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677, as such section existed on January 1, 2016, and disability benefits, including supplemental security income pursuant to 42 U.S.C. 1382 et seq., as such sections existed on January 1, 2016, or social security disability insurance pursuant to 42 U.S.C. 423, as such section existed on January 1, 2016, if the child may be eligible as an adult;

(x) An application for public assistance and information on how to access the system to determine public assistance eligibility;

(xi) A letter prepared by the department that verifies the child's name and date of birth, dates the child was in foster care, and whether the child was in foster care on his or her eighteenth, nineteenth, or twenty-first birthday and enrolled in medicaid while in foster care;

(xii) Written information about the child's Indian heritage or tribal connection, if any; and

(xiii) Written information on how to access personal documents in the future.

(c) All fees associated with securing the certified copy of the child's birth certificate or obtaining a driver's license or a state identification card shall be waived by the state.

(d) The transition proposal shall document that the child was provided all of the documents listed in this subsection. The court shall make a finding as to whether the child has received the documents as part of the independence hearing as provided in subdivision (2)(d) of section 43-285.

**Source:** Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3; Laws 2014, LB853, § 25; Laws 2016, LB746, § 19; Laws 2019, LB600, § 2; Laws 2020, LB219, § 1.  
Effective date November 14, 2020.

**Cross References**

**Young Adult Bridge to Independence Act**, see section 43-4501.

**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. Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.
- 43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

**43-1411 Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.**

(1) A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by (a) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless (i) a valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.25 or section 43-105 for purposes of adoption or (ii) a county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116 or (b) the guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

(2) Notwithstanding any other provision of law, a person claiming to be the biological father of a child over which the juvenile court already has jurisdiction may file a complaint to intervene in such juvenile proceeding to institute an action to establish the paternity of the child. The complaint to intervene shall be accompanied by an affidavit under oath that the affiant believes he is the biological father of the juvenile. No filing fee shall be charged for filing the complaint and affidavit. Upon filing of the complaint and affidavit, the juvenile court shall enter an order pursuant to section 43-1414 to require genetic testing and to require the juvenile to be made available for genetic testing. The costs of genetic testing shall be paid by the intervenor, the county, or the state at the discretion of the juvenile court. This subsection does not authorize intervention by a person whose parental rights to such child have been terminated by the order of any court of competent jurisdiction.

**Source:** Laws 1941, c. 81, § 11, p. 325; C.S.Supp., 1941, § 43-711; R.S. 1943, § 13-111; R.S. 1943, (1983), § 13-111; Laws 1985, Second Spec. Sess., LB 7, § 75; Laws 1986, LB 813, § 1; Laws 1991, LB 457, § 16; Laws 1993, LB 500, § 54; Laws 1994, LB 1224, § 59; Laws 1995, LB 712, § 29; Laws 1998, LB 1041, § 45; Laws 2007, LB247, § 22; Laws 2020, LB93, § 1.  
Effective date November 14, 2020.

**Cross References**

Uniform Interstate Family Support Act, see section 42-701.

**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

43-1903. Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.

43-1906. Nebraska Child Abuse Prevention Fund; established; investment; use.

**43-1903 Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.**

(1) There is hereby created within the department the Nebraska Child Abuse Prevention Fund Board which shall be composed of nine members as follows: Two representatives of the Department of Health and Human Services appointed by the chief executive officer and seven members to be appointed by the Governor with the approval of the Legislature. The Governor shall appoint two members from each of the three congressional districts and one member from the state at large. As a group, the appointed board members (a) shall demonstrate knowledge in the area of child abuse and neglect prevention, (b) shall be representative of the demographic composition of this state, and (c) to the extent practicable, shall be representative of all of the following categories (i) the business community, (ii) the religious community, (iii) the legal community, (iv) professional providers of child abuse and neglect prevention services, and (v) volunteers in child abuse and neglect prevention services.

(2) The term of each appointed board member shall be three years, except that of the board members first appointed, two, including the at-large member, shall serve for three years, three shall serve for two years, and two shall serve for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes the appointments. An appointed board member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The board shall elect a chairperson from among the appointed board members who shall serve for a term of two years. The board may elect the other officers and establish committees as it deems appropriate.

(4) The members of the board shall not receive any compensation for their services but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The reimbursement shall be paid from the fund. In any one fiscal year, no more than five percent of the annually available funds as provided in section 43-1906 shall be used for the purpose of reimbursement of board members.

(5) Any board member may be removed by the Governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

**Source:** Laws 1986, LB 333, § 3; Laws 1996, LB 1044, § 207; Laws 2007, LB296, § 133; Laws 2020, LB381, § 31.  
Operative date January 1, 2021.

**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.**

(1) 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.

(2) 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:

(a) Eighteen years of age or older and who is not a ward of the state may:

(i) Enter into a binding contract or lease of whatever kind or nature and shall be legally responsible for such contract or lease, including legal responsibility to third parties;

(ii) Execute, sign, authorize, or otherwise authenticate (A) an effective financing statement, (B) a promissory note or other instrument evidencing an obligation to repay, or (C) a mortgage, trust deed, security agreement, financing statement, or other security instrument to grant a lien or security interest in real or personal property or fixtures, and shall be legally responsible for such document, including legal responsibility to third parties; and

(iii) Acquire or convey title to real property and shall have legal responsibility for such acquisition or conveyance, including legal responsibility to third parties; and

(b) 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; Laws 2019, LB55, § 5.

**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.

**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 Juvenile 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.

**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.

**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.

**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 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; Laws 2020, LB381, § 32.

Operative date January 1, 2021.

#### **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.

**43-2413 Repealed. Laws 2018, LB670, § 21.**

**ARTICLE 26  
CHILD CARE**

Section  
43-2606. Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

**43-2606 Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.**

(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) Beginning January 1, 2020, for programs that report to the Nebraska Early Childhood Professional Record System created under section 71-1962, the department shall use the Nebraska Early Childhood Professional Record System to (a) document the training levels of staff in specific child care settings to assist parents in selecting optimal care settings and (b) verify minimum training requirements of employees of such programs.

(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, abusive head trauma in infants and children, crying plans, 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; Laws 2019, LB60, § 1; Laws 2019, LB590, § 1.

**ARTICLE 29  
PARENTING ACT**

Section

- 43-2922. Terms, defined.
- 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.
- 43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.
- 43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.
- 43-2939. Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

**43-2922 Terms, defined.**

For purposes of the Parenting Act:

- (1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;
- (2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;
- (3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;
- (4) Child means a minor under nineteen years of age;
- (5) Child abuse or neglect has the same meaning as in section 28-710;
- (6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;
- (7) Custody includes legal custody and physical custody;
- (8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator authorized to provide mediation under section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing

and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

**Source:** Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3; Laws 2015, LB219, § 31; Laws 2019, LB595, § 36.

**Cross References**

**Conciliation Court Law**, see section 42-802.

**Uniform Deployed Parents Custody and Visitation Act**, see section 43-4601.

**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 modifica-

tions 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.

**43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.**

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators who are qualified under subsection (2) or (3) of section 43-2938.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in

mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2938.

(4) 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.

**Source:** Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3; Laws 2019, LB595, § 37.

**43-2938 Mediator; qualifications; training; approved specialized mediator; requirements.**

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, a mediator approved by the Office of Dispute Resolution, or an attorney as provided in subsection (4) of this section.

(2) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators for inclusion in the roster to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

(4) In lieu of qualifying as a mediator under subsection (2) or (3) of this section, an attorney licensed to practice law in the State of Nebraska may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

**Source:** Laws 2007, LB554, § 19; Laws 2019, LB595, § 38.

**43-2939 Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.**

(1) A Parenting Act mediator, including an attorney serving as a parenting plan mediator pursuant to subsection (4) of section 43-2938, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed



in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative

dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

**Source:** Laws 2007, LB554, § 20; Laws 2020, LB912, § 17.  
Effective date November 14, 2020.

**ARTICLE 32**  
**MCGRUFF HOUSE**

Section

43-3201. Repealed. Laws 2019, LB2, § 1.

**43-3201 Repealed. Laws 2019, LB2, § 1.**

**ARTICLE 33**  
**SUPPORT ENFORCEMENT**

(e) STATE DISBURSEMENT UNIT

Section

43-3342.03. State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(e) STATE DISBURSEMENT UNIT

**43-3342.03 State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.**

(1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued. Support order payments made to the clerk of the district court shall be forwarded to the State Disbursement Unit by electronic transfer.

(2) The State Disbursement Unit may collect a fee equal to the actual cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. After a payor has originated one payment resulting in a returned check or an electronic payment not accepted within a period of two years, the unit may issue a notice to the originator that, for the following year, any payment shall be required to be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit. After a payor has originated two payments resulting in returned checks or electronic payments not accepted, the unit may issue a notice to the originator that all future payments shall be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment. The fees shall be remitted to the State Treasurer for credit to the State Disbursement Unit Cash Fund, which is hereby created, which funds shall be used to offset the expenses incurred in the collection of

child support bad debt and other collection expenses incurred by the unit. 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 State Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments.

(4) Employers with more than fifty employees who have an employee with a child support order shall remit child support payments electronically.

**Source:** Laws 2000, LB 972, § 3; Laws 2002, LB 1062, § 4; Laws 2005, LB 116, § 21; Laws 2008, LB620, § 1; Laws 2019, LB505, § 1.

Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.**

(1) The Child Support Advisory Commission is created. Commission members shall include:

(a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;

(b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;

(c) One county attorney who works in child support;

(d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;

(e) One custodial parent who has a court order to receive child support;

(f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

**Source:** Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43; Laws 2013, LB222, § 11; Laws 2020, LB381, § 33.

Operative date January 1, 2021.

**ARTICLE 34**

**EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL**

Section

43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

**43-3401 Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.**

The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

(1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and

(2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities ser-

vices, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

**Source:** Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170; Laws 2020, LB381, § 34.  
Operative date January 1, 2021.

**Cross References**

**Early Intervention Act**, see section 43-2501.  
**Quality Child Care Act**, see section 43-2601.

**ARTICLE 40**

**CHILDREN'S BEHAVIORAL HEALTH**

**Section**

43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.  
43-4002. Repealed. Laws 2020, LB1188, § 21.

**43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.**

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

**Source:** Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1; Laws 2020, LB381, § 35.  
Operative date January 1, 2021.

**43-4002 Repealed. Laws 2020, LB1188, § 21.**

**ARTICLE 42**

**NEBRASKA CHILDREN'S COMMISSION**

Section

- 43-4201. Legislative findings, declarations, and intent.
- 43-4202. Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.
- 43-4203. Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.
- 43-4204. Strategic child welfare priorities for research or policy development.
- 43-4205. Repealed. Laws 2019, LB600, § 23.
- 43-4206. Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.
- 43-4207. Nebraska Children's Commission; report; hearing.
- 43-4208. Repealed. Laws 2019, LB600, § 23.
- 43-4209. Repealed. Laws 2019, LB600, § 23.
- 43-4210. Repealed. Laws 2019, LB600, § 23.
- 43-4211. Repealed. Laws 2019, LB600, § 23.
- 43-4213. Repealed. Laws 2019, LB600, § 23.
- 43-4214. Repealed. Laws 2019, LB600, § 23.
- 43-4216. Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.
- 43-4217. Foster Care Reimbursement Rate Committee; duties; reports.
- 43-4218. Transferred to section 43-4716.

**43-4201 Legislative findings, declarations, and intent.**

(1) The Legislature finds and declares that:

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided to children and families by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

(2) It is the intent of the Legislature in creating the Nebraska Children's Commission to provide for the needs identified in subsection (1) of this section, to provide strategic priorities for research or policy development within the child welfare system and juvenile justice system, and to provide a structure to the commission that maintains the framework of the three branches of government and their respective powers and duties.

**Source:** Laws 2012, LB821, § 1; Laws 2019, LB600, § 3.

**43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.**

(1) The Nebraska Children's Commission is created as a high-level leadership body to monitor and evaluate the child welfare and juvenile justice systems. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare and juvenile justice programs and services.

(2)(a) The Governor shall appoint fifteen voting members. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare and juvenile justice systems and shall include: (i) A biological parent currently or previously involved in the child welfare system or juvenile justice system; (ii) a young adult previously in foster care; and (iii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed from a list of three nominees submitted by the Commission on Indian Affairs.

(b) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (i) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (ii) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (iii) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (iv) three persons appointed by the State Court Administrator; (v) the executive director of the Foster Care Review Office; (vi) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; (vii) the Director of Behavioral Health of the Division of Behavioral Health of the Department of Health and Human Services or his or her designee; (viii) the Commissioner of Education or his or her designee; and (ix) the Inspector General of Nebraska Child Welfare.

(3) The nonvoting members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes within their areas of expertise, and gather information for the commission. The commission may hire staff to carry out the responsibilities of the commission.

(4) For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission may hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in updating the statewide strategic plan.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for expenses as members of such commission as provided in sections 81-1174 to 81-1177. No member of the commission shall have any private financial interest, profit, or benefit from any work of the commission.

(7) It is the intent of the Legislature to fund the operations of the commission using the Nebraska Health Care Cash Fund for fiscal years 2019-20 and 2020-21.

**Source:** Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5; Laws 2015, LB87, § 1; Laws 2016, LB746, § 24; Laws 2019, LB600, § 4; Laws 2020, LB381, § 36.  
Operative date January 1, 2021.

**43-4203 Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.**

(1) The Nebraska Children's 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 Juvenile Justice Institute at the University



of Nebraska at Omaha, the Center for Health Policy at the University of Nebraska Medical Center, 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.

(2) The commission shall collaborate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Crossover Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(3) 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.

(4) The Foster Care Reimbursement Rate Committee created pursuant to section 43-4216, the Nebraska Strengthening Families Act Committee created pursuant to section 43-4716, and the Bridge to Independence Advisory Committee created pursuant to section 43-4513 shall be under the jurisdiction of the commission.

(5) 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.

(6) The 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.

(7) The commission may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the commission or may be individuals who have knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, or the ability to collaborate within the subcommittee and with the commission to carry out the powers and duties of the commission. A subcommittee shall meet as necessary to complete the work delegated by the commission and shall report its findings to the relevant committee within the commission.

(8) No member of any committee or subcommittee created pursuant to this section shall have any private financial interest, profit, or benefit from any work of such committee or subcommittee.

**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; Laws 2019, LB600, § 5; Laws 2020, LB1061, § 8.  
Effective date November 14, 2020.

**43-4204 Strategic child welfare priorities for research or policy development.**

The Nebraska Children's Commission shall determine three to five strategic child welfare priorities for research or policy development for each biennium to carry out the legislative intent stated in section 43-4201 for child welfare program and service reform in Nebraska. In determining the strategic child welfare priorities, the commission shall consider the findings and recommendations set forth in the annual report of the Foster Care Review Board, the annual report of the Office of Inspector General for Child Welfare, and the federal Child and Family Services Reviews outcomes.

**Source:** Laws 2012, LB821, § 4; Laws 2019, LB600, § 6.

**43-4205 Repealed. Laws 2019, LB600, § 23.**

**43-4206 Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.**

The Department of Health and Human Services and the Office of Probation Administration shall fully cooperate with the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies.

**Source:** Laws 2012, LB821, § 6; Laws 2019, LB600, § 7.

**43-4207 Nebraska Children's Commission; report; hearing.**

The Nebraska Children's Commission shall annually provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature defining its strategic child welfare priorities and progress toward addressing such priorities, summarizing reports from each committee and subcommittee of the commission, and making recommendations on or before September 1 of each year. The commission shall present a summary of such report in an annual public hearing before the Health and Human Services Committee of the Legislature on or before December 1 of each year.

**Source:** Laws 2012, LB821, § 7; Laws 2015, LB87, § 2; Laws 2018, LB732, § 2; Laws 2019, LB600, § 8.

**43-4208 Repealed. Laws 2019, LB600, § 23.**

**43-4209 Repealed. Laws 2019, LB600, § 23.**

**43-4210 Repealed. Laws 2019, LB600, § 23.**

**43-4211 Repealed. Laws 2019, LB600, § 23.**

**43-4213 Repealed. Laws 2019, LB600, § 23.**

**43-4214 Repealed. Laws 2019, LB600, § 23.**

**43-4216 Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.**

(1) The Foster Care Reimbursement Rate Committee is created. The committee shall be convened at least once every four years.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include child welfare; (iii) a representative from an advocacy organization, the singular focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meetings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the members of the committee and the chairperson of the committee and may fill vacancies on the committee as they occur.

**Source:** Laws 2013, LB530, § 3; Laws 2019, LB600, § 9.

**43-4217 Foster Care Reimbursement Rate Committee; duties; reports.**

(1) The Foster Care Reimbursement Rate Committee created in section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and

account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child’s placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states’ assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

**Source:** Laws 2013, LB530, § 4; Laws 2019, LB600, § 10.

**43-4218 Transferred to section 43-4716.**

**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; reports of occurrences at youth rehabilitation and treatment center; state agencies, 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.
- 43-4331. Summary of reports and investigations; contents.
- 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; reports of occurrences at youth rehabilitation and treatment center; state agencies, 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 (5) 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)(a) The Office of Juvenile Services shall report to the office of Inspector General of Nebraska Child Welfare as soon as reasonably possible after any of the following instances occur at a youth rehabilitation and treatment center:

(i) An assault;

(ii) An escape or elopement;

- (iii) An attempted suicide;
- (iv) Self-harm by a juvenile;
- (v) Property damage not caused by normal wear and tear;
- (vi) The use of mechanical restraints on a juvenile;
- (vii) A significant medical event suffered by a juvenile; and
- (viii) Internally substantiated violations of 34 U.S.C. 30301 et seq.

(b) The Office of Juvenile Services and the office of Inspector General of Nebraska Child Welfare shall, if requested by either party, work in collaboration to clarify the specific parameters to comply with subdivision (3)(a) of this section.

(4) The department shall notify the office of Inspector General of Nebraska Child Welfare of any leadership changes within the Office of Juvenile Services and the youth rehabilitation and treatment centers.

(5) 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.

(6) 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.

(7) 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; Laws 2020, LB1144, § 1.

Effective date November 14, 2020.

**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.

#### **43-4331 Summary of reports and investigations; contents.**

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response implemented in accor-

dance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

**Source:** Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23; Laws 2020, LB1061, § 9. Effective date November 14, 2020.

**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;

(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; and

(10) Information on children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, as defined in section 28-830, including:

(a) The number of reports to the statewide toll-free number pursuant to section 28-711 alleging sex trafficking of a minor or labor trafficking of a minor and the number of children alleged to be victims;

(b) The number of substantiated victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were already served by the department;

(c) The number of children determined to be reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were previously served by the department;

(d) The types and costs of services provided to children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor; and

(e) The number of ongoing cases opened due to allegations of sex trafficking of a minor or labor trafficking of a minor and number of children and families served through these cases.

**Source:** Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13; Laws 2017, LB417, § 6; Laws 2018, LB1078, § 5; Laws 2019, LB519, § 15.

#### ARTICLE 45

#### YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

Section	
43-4502.	Purpose of act.
43-4503.	Terms, defined.
43-4504.	Bridge to independence program; availability.
43-4508.	Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.
43-4510.	Court-appointed attorney; continuation of guardian ad litem; independence coordinator; duties; notice; court appointed special advocate volunteer.
43-4511.	Extended guardianship assistance and medical care; eligibility; use.
43-4511.01.	Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to independence program; choice of participant; notice; contents; department; duties.
43-4512.	Extended adoption assistance and medical care; eligibility; use.
43-4513.	Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.
43-4514.	Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

#### 43-4502 Purpose of act.

The purpose of the Young Adult Bridge to Independence Act is to support former state or tribal wards in transitioning to adulthood, becoming self-sufficient, and creating permanent relationships. The bridge to independence program shall at all times recognize and respect the autonomy of the young adult. Nothing in the Young Adult Bridge to Independence Act shall be construed to abrogate any other rights that a person who has attained eighteen or nineteen years of age may have as an adult under state or tribal law.

**Source:** Laws 2013, LB216, § 2; Laws 2014, LB853, § 31; Laws 2020, LB848, § 3.

Operative date July 1, 2021.

#### 43-4503 Terms, defined.

For purposes of the Young Adult Bridge to Independence Act:

(1) Age of eligibility means:

(a) Nineteen years of age; or

(b) Eighteen years of age if the young adult has attained the age of majority under tribal law;

(2) Bridge to independence program means the extended services and support available to a young adult under the Young Adult Bridge to Independence

Act other than extended guardianship assistance described in section 43-4511 and extended adoption assistance described in section 43-4512;

(3) Child means an individual who has not attained twenty-one years of age;

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

(5) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(6) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(7) Young adult means an individual who has attained the age of eligibility but who has not attained twenty-one years of age.

**Source:** Laws 2013, LB216, § 3; Laws 2014, LB853, § 32; Laws 2015, LB243, § 15; Laws 2020, LB848, § 4.  
Operative date July 1, 2021.

**43-4504 Bridge to independence program; availability.**

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained the age of eligibility;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 or the equivalent under tribal law or who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 or the equivalent under tribal law if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years and (a) who, upon attaining the age of eligibility, was in an out-of-home placement or had been discharged to independent living or (b) with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or a state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective;

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult;

(4) Who is a Nebraska resident, except that this requirement shall not disqualify a young adult who was a Nebraska resident but was placed outside Nebraska pursuant to the Interstate Compact for the Placement of Children; and

(5) Who does not meet the level of care for a nursing facility as defined in section 71-424, for a skilled nursing facility as defined in section 71-429, or for an intermediate care facility for persons with developmental disabilities as defined in section 71-421.

The changes made to subdivision (2)(b) of this section by Laws 2015, LB243, become operative on July 1, 2015.

**Source:** Laws 2013, LB216, § 4; Laws 2014, LB853, § 33; Laws 2015, LB243, § 16; Laws 2019, LB600, § 11; Laws 2020, LB848, § 5.  
Operative date July 1, 2021.

**Cross References**

Interstate Compact for the Placement of Children, see section 43-1103.

**43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.**

(1) Within fifteen days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) The department shall ensure continuity of care and eligibility by working with a child who wants to participate in the bridge to independence program and is likely to be eligible to participate in such program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247 or subdivision (8) of section 43-247 if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years. The voluntary services and support agreement shall be signed and the petition filed with the court upon the child's nineteenth birthday or within ten days thereafter. There shall be no interruption in the foster care maintenance payment and medical assistance coverage for a child who is eligible and chooses to participate in the bridge to independence program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably practicable, at the request of the young adult, the department, or any other party to the proceeding. The court shall make a reasonable effort finding required by subdivision (6)(c) of this section within twelve months after the court makes its best interests determination under subsection (4) of this section. Upon the filing of the petition as provided in subsection (1) of this section or anytime thereafter, the young adult may request, in the voluntary services and support agreement or by other appropriate means, a timeframe in which the young adult prefers to have the permanency review hearing scheduled and the court shall seek to accommodate the request as practicable and consistent with 42 U.S.C. 675(5)(C). The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. The court shall also determine whether reasonable efforts have been made to achieve the permanency goal as set forth in the case plan and the department's report provided under subdivision (6)(b) of this section. The court shall issue specific written findings regarding such reasonable efforts. The court has the authority to determine whether the young adult is receiving the services and support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court believes that the young adult requires additional services and support to achieve the goals



documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

(7) All pleadings, filings, documents, and reports filed pursuant to this section and subdivision (11) of section 43-247 shall be confidential. The proceedings pursuant to this section and subdivision (11) of section 43-247 shall be confidential unless a young adult provides a written waiver or a verbal waiver in court. Such waiver may be made by the young adult in order to permit the proceedings to be held outside of the courtroom or for any other reason. The Foster Care Review Office shall have access to any and all pleadings, filings, documents, reports, and proceedings necessary to complete its case review process. This section shall not prevent the juvenile court from issuing an order identifying individuals and agencies who shall be allowed to receive otherwise confidential information for legitimate and official purposes as authorized by section 43-3001.

**Source:** Laws 2013, LB216, § 8; Laws 2014, LB853, § 37; Laws 2015, LB243, § 19; Laws 2019, LB600, § 12.

**43-4510 Court-appointed attorney; continuation of guardian ad litem; independence coordinator; duties; notice; court appointed special advocate volunteer.**

(1) If desired by the young adult, the young adult shall be provided a court-appointed attorney who has received training appropriate to the role. The attorney's representation of the young adult shall be client-directed. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the bridge to independence program is providing the young adult with the services and support required under the Young Adult Bridge to Independence Act. For young adults who were appointed a guardian ad litem before the young adult attained the age of eligibility, the guardian ad litem's appointment may be continued, with consent from the young adult, but under a client-directed model of representation. Before entering into a voluntary services and support agreement and at least sixty days prior to each permanency and case review, the independence coordinator shall notify the young adult of his or her right to request a client-directed attorney if the young adult would like an attorney to be appointed and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, and the specific steps to take to request that an attorney be appointed if the young adult would like an attorney appointed.

(2) The court has discretion to appoint a court appointed special advocate volunteer or continue the appointment of a previously appointed court appointed special advocate volunteer with the consent of the young adult.

**Source:** Laws 2013, LB216, § 10; Laws 2014, LB853, § 40; Laws 2020, LB848, § 6.

Operative date July 1, 2021.

**43-4511 Extended guardianship assistance and medical care; eligibility; use.**

(1) The department shall provide extended guardianship assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and if the young adult meets at least one of the following conditions for eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(3) The changes made to this section by Laws 2015, LB243, become operative on July 1, 2015.

**Source:** Laws 2013, LB216, § 11; Laws 2014, LB853, § 41; Laws 2015, LB243, § 20; Laws 2020, LB848, § 7.  
Operative date July 1, 2021.

**43-4511.01 Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to independence program; choice of participant; notice; contents; department; duties.**

(1)(a) Young adults who are eligible to participate under both extended guardianship assistance as provided in section 43-4511 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(b) Young adults who are eligible to participate under both extended adoption assistance as provided in section 43-4512 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(2) The department shall create a clear and developmentally appropriate written notice discussing the rights of young adults who are eligible under both extended guardianship assistance and the bridge to independence program and a notice for young adults who are eligible under both extended adoption assistance and the bridge to independence program. The notice shall explain the benefits and responsibilities and the process to apply. The department shall provide the written notice and make efforts to provide a verbal explanation to a

young adult with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective. The department shall provide the notice yearly thereafter until such young adult reaches nineteen years of age and not later than ninety days prior to the young adult attaining nineteen years of age.

**Source:** Laws 2015, LB243, § 21; Laws 2019, LB600, § 13.

**43-4512 Extended adoption assistance and medical care; eligibility; use.**

(1) The department shall provide extended adoption assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom an adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and who meets at least one of the following conditions of eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The adoptive parent or parents shall ensure that any adoption assistance funds provided by the department and received by the adoptive parent shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

**Source:** Laws 2013, LB216, § 12; Laws 2014, LB853, § 42; Laws 2015, LB243, § 22; Laws 2020, LB848, § 8.

Operative date July 1, 2021.

**43-4513 Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.**

(1) The Bridge to Independence Advisory Committee is created within the Nebraska Children's Commission to advise and make recommendations to the Legislature 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. The Bridge to Independence Advisory Committee 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. 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; Laws 2019, LB600, § 14.

**43-4514 Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.**

(1) The department shall submit an amended state plan amendment by October 15, 2019, to seek federal Title IV-E funding under 42 U.S.C. 672 for any newly eligible young adult who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 if such young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after the young adult had attained the age of sixteen years and for any newly eligible young adult with respect to whom an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the child had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded adoption assistance agreement was in effect if the child had attained sixteen years of age before the agreement became effective pursuant to subdivision (2)(b) of section 43-4504.

(2) The department shall implement the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673.

(3) The department shall adopt and promulgate rules and regulations as needed to carry out this section by October 15, 2015.

(4) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2015.

**Source:** Laws 2013, LB216, § 14; Laws 2014, LB853, § 44; Laws 2015, LB243, § 24; Laws 2019, LB600, § 15.

## 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; requirements for a driver's license.  
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.  
43-4716. Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

**43-4701 Act, how cited.**

Sections 43-4701 to 43-4716 shall be known and may be cited as the Nebraska Strengthening Families Act.

**Source:** Laws 2016, LB746, § 1; Laws 2017, LB225, § 8; Laws 2019, LB600, § 16.

**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; requirements for a driver's license.**

(1) 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.

(2) A child in foster care shall not be required, by virtue of his or her status as a child in foster care, to meet any more requirements for a driver's license under the Motor Vehicle Operator's License Act than any other child applying for the same license.

**Source:** Laws 2016, LB746, § 4; Laws 2017, LB225, § 11; Laws 2020, LB219, § 2.

Effective date November 14, 2020.

**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.

**43-4716 Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.**

(1) The Nebraska Strengthening Families Act Committee is created.

(2) 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.

(3) 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.

(4) Members shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint a chairperson or chairpersons of the committee and may fill vacancies on the committee as such vacancies occur.

(5) 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; R.S.Supp.,2018, § 43-4218; Laws 2019, LB600, § 17.

## 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.
- 43-4809. Burden of proof; advisement by court; judgment of emancipation.
- 43-4810. Judgment of emancipation; effect; certified copy; use by third party.
- 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.

#### **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.

**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.

**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.

**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.

#### **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.

#### **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.

#### **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.

**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.

**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, gam-

bling, 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.

**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.

**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.

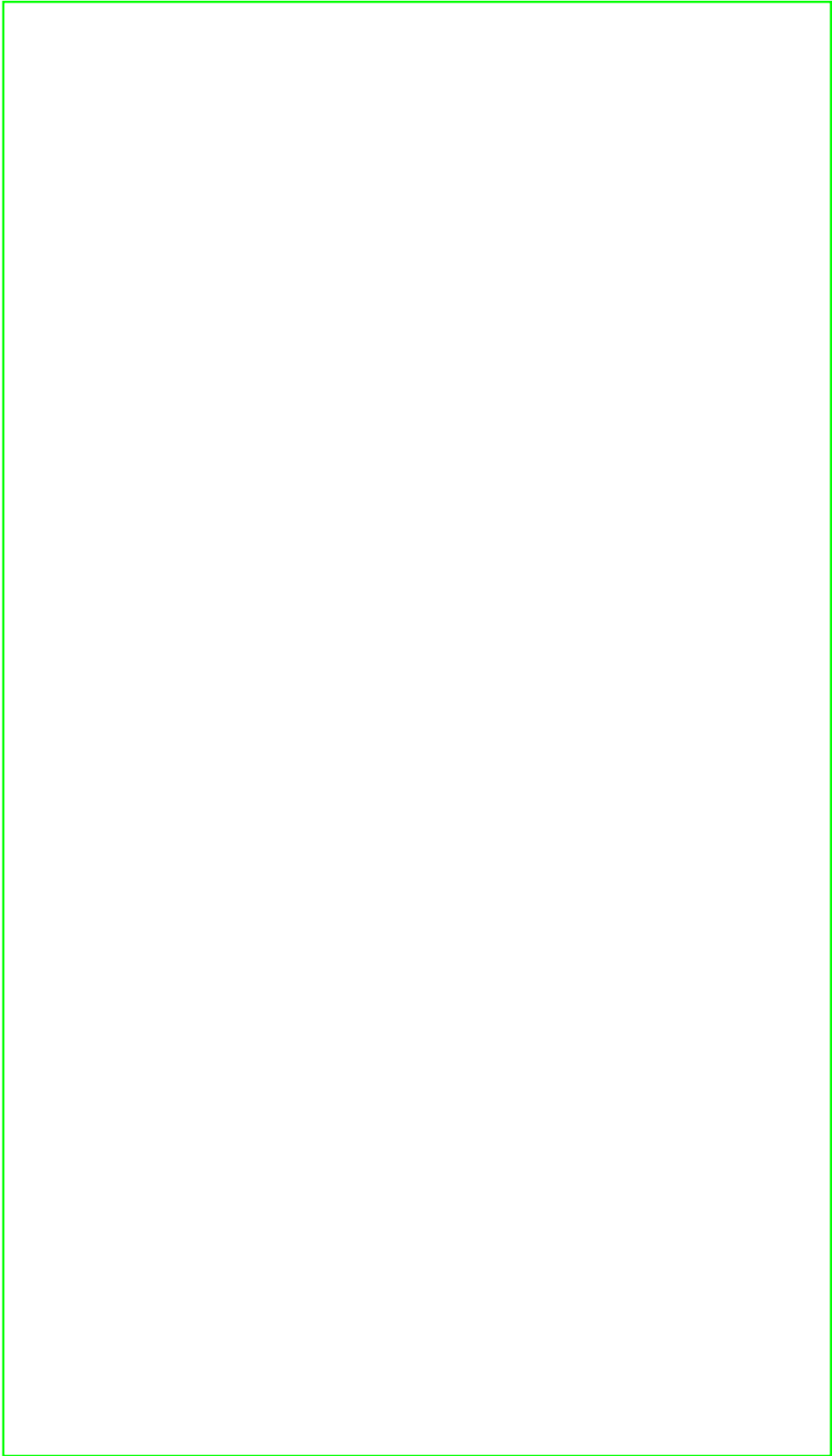
(5) If, after hearing, the court determines by clear and convincing evidence that rescinding the judgment of emancipation is in the best interests of the minor because the minor has become indigent and has insufficient means of support, or because the judgment of emancipation was obtained by fraud, misrepresentation, 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.





**INSURANCE**

**CHAPTER 44  
INSURANCE**

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## ARTICLE 1

## POWERS OF DEPARTMENT OF INSURANCE

## Section

- 44-102.01. Insurance; service contract excluded.
- 44-107. Notice to Banking, Commerce and Insurance Committee of the Legislature; hearing.
- 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.

**44-107 Notice to Banking, Commerce and Insurance Committee of the Legislature; hearing.**

The Department of Insurance shall notify the chairperson and members of the Banking, Commerce and Insurance Committee of the Legislature prior to submitting any request or application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services for a state innovation waiver under section 1332 of the federal Patient Protection and Affordable Care Act. Such notification shall be made electronically and shall include a copy of the application for the federal waiver. The Banking, Commerce and Insurance Committee of the Legislature shall hold a public hearing on such waiver application.

**Source:** Laws 2019, LB468, § 4.

**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.
- 44-213.01. Repealed. Laws 2019, LB469, § 10.
- 44-213.02. Repealed. Laws 2019, LB469, § 10.
- 44-213.03. Repealed. Laws 2019, LB469, § 10.
- 44-213.04. Repealed. Laws 2019, LB469, § 10.
- 44-213.05. Repealed. Laws 2019, LB469, § 10.



## Section

44-213.06. Repealed. Laws 2019, LB469, § 10.

44-213.07. Repealed. Laws 2019, LB469, § 10.

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.

**44-213.01 Repealed. Laws 2019, LB469, § 10.**

**44-213.02 Repealed. Laws 2019, LB469, § 10.**

**44-213.03 Repealed. Laws 2019, LB469, § 10.**

**44-213.04 Repealed. Laws 2019, LB469, § 10.**

**44-213.05 Repealed. Laws 2019, LB469, § 10.**

**44-213.06 Repealed. Laws 2019, LB469, § 10.**

**44-213.07 Repealed. Laws 2019, LB469, § 10.**

**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

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(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.
- 44-315. Electronic delivery of notices or documents; conditions; insurer; duties; applicability.
- 44-316. Insurer; policy and endorsement; mailing, delivery, or posting on web site; conditions for posting on insurer's web site.
- 44-321. Health insurance policy; mental health service delivered in a school; insurer; prohibited acts.
- 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.

**44-315 Electronic delivery of notices or documents; conditions; insurer; duties; applicability.**

(1) For purposes of this section:

(a) Delivered by electronic means includes:

(i) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(ii) Posting on an electronic network or site accessible via the Internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notices or documents or by any other delivery method that has been consented to by the party; and

(b) Party means any recipient of any notice or document required as part of a first-party insurance transaction, including, but not limited to, an applicant, an insured, or a policyholder.

(2) Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act.

(3) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first-class mail, registered mail, certified mail, certificate of mailing, or a commercial mail delivery service. In any instance in which proof of receipt is required for a mailing, the electronic delivery method used must provide for verification or acknowledgment of receipt.

(4) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(a) The party has affirmatively consented to such method of delivery and has not withdrawn the consent;

(b) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(i) The right of the party to withdraw consent to have a notice or document delivered by electronic means at any time;

(ii) Any conditions or consequences imposed in the event consent is withdrawn;

(iii) The transactions and types of notices and documents to which the party's consent would apply;

(iv) The right of a party to have a notice or document delivered in paper form by mail and the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and

(v) The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

(c) The party:

(i) Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) Consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(d) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

(i) Provides the party with a statement that describes:

(A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(B) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(ii) Complies with subdivision (4)(b) of this section.

(5) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

(6) If any provision of Chapter 44 or any other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(7) If verification or acknowledgment of receipt is not obtained, the notice or document shall be sent to the party by mail as prescribed by Chapter 44. If two or more electronic communications to the party are returned as undeliverable during a thirty-day period, all future communications shall be sent to the party by first-class or other mail as prescribed by law unless and until the party consents electronically, or confirms electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.

(8) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means

to the party before the withdrawal of consent is effective. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subdivision (4)(d) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(9) This section does not apply to a notice or document delivered by an insurer in an electronic form before September 1, 2019, to a party who, before such date, has consented to receive notices or documents in an electronic form otherwise allowed by law.

(10) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before September 1, 2019, and pursuant to this section an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall provide the party with a statement that describes:

(a) The notices or documents that will be delivered by electronic means under this section that were not previously delivered electronically; and

(b) The party's right to withdraw consent to have notices or documents delivered by electronic means without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

(11) An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if:

(a) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party; or

(b) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

(12) A producer shall not be subject to civil liability for any harm or injury that occurs as a result of a party's election to receive any notice or document by electronic means or by the insurer's failure to deliver a notice or document by electronic means.

(13) This section shall not be construed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as such act existed on September 1, 2019.

(14) This section shall apply only to life insurance policies, annuity contracts, and property and casualty insurance policies.

**Source:** Laws 2019, LB116, § 1.

**Cross References**

Uniform Electronic Transactions Act, see section 86-612.

**44-316 Insurer; policy and endorsement; mailing, delivery, or posting on web site; conditions for posting on insurer's web site.**

Notwithstanding the provisions of section 44-315, life insurance policies, annuity contracts, and property and casualty insurance policies and endorsements that do not contain personally identifiable financial information as defined in section 44-903 may be mailed, delivered, or posted on the insurer's web site. If the insurer elects to post insurance policies and endorsements on its

web site in lieu of mailing or delivering them to the insured, the insurer must comply with all of the following conditions:

(1) The policy and endorsements must be accessible to the insured and producer of record and remain that way for as long as the policy is in force;

(2) After the expiration of the policy, the insurer must archive its expired policies and endorsements for a period of five years and make them available upon request;

(3) The policies and endorsements must be posted in a manner that enables the insured and producer of record to print and save the policy and endorsements using programs or applications that are widely available on the Internet and free to use;

(4) The insurer must provide the following information in, or simultaneously with, each declarations page provided at the time of issuance of the initial policy and any renewals of such policy:

(a) A description of the exact policy and endorsement forms purchased by the insured;

(b) A description of the insured's right to receive, upon request and without charge, a paper copy of the policy and endorsements by mail; and

(c) The Internet address where the policy and endorsements are posted;

(5) The insurer, upon request and without charge, must mail a paper copy of the policy and endorsements to the insured; and

(6) The insurer must provide notice, in the manner in which the insurer customarily communicates with the insured, of any changes to the forms or endorsements, the insured's right to obtain, upon request and without charge, a paper copy of such forms or endorsements, and the Internet address where such forms or endorsements are posted.

**Source:** Laws 2019, LB116, § 2.

**44-321 Health insurance policy; mental health service delivered in a school; insurer; prohibited acts.**

(1) For purposes of this section:

(a) 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; and

(b) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79.

(2) Notwithstanding section 44-3,131, an insurer offering a health insurance policy shall not deny coverage or payment for a mental health service solely because the service is delivered in a school.

(3) Nothing in this section shall:

(a) Require an insurer offering a health insurance policy to pay for mental health services that are otherwise excluded from such health insurance policy;

(b) Require an insurer offering a health insurance policy to pay for mental health services that are provided by an individual employed by or under contract with a school district or an educational service unit in a regular full-time or part-time position; or

(c) Prevent application of any other provision of such health insurance policy.

(4) This section applies to health insurance policies issued or renewed on or after January 1, 2020, and to claims for reimbursement based on such policies for costs incurred on or after January 1, 2020.

**Source:** Laws 2019, LB619, § 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.

**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 beneficia-

ry 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.

**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; duties; 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, Nebraska Revised Statutes, Volume 2A.

**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 accord-

ing 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; duties; 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), (7), or (8) 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 (9) 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 trusted 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 trusted 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 trusted 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 trusted 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 trusted 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 recognized 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 trustee 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 trustee 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)(a) Credit shall be allowed when reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below:

(i) Such assuming insurer shall have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. A reciprocal jurisdiction is a jurisdiction that meets one of the following:

(A) A jurisdiction, other than a jurisdiction of the United States, that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a covered agreement is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. 313 and 314, as such sections existed on January 1, 2020, that is currently in effect or in a period of provisional application and that addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(B) A jurisdiction of the United States that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program; or

(C) A qualified jurisdiction as determined by the director pursuant to subdivision (6)(d)(i) of this section that is not otherwise described in subdivision (7)(a)(i)(A) or (B) of this section and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;



(ii) Such assuming insurer shall have and maintain, on an ongoing basis, the minimum capital and surplus or the equivalent, calculated according to the methodology of its domiciliary jurisdiction, as set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09. If such assuming insurer is an association, including an incorporated or individual unincorporated underwriter, such assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities and calculated according to the methodology of its domiciliary jurisdiction, and a central fund containing a minimum balance as set forth in the rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(iii) Such assuming insurer shall have and maintain, on an ongoing basis, the minimum solvency or capital ratio, as applicable, as set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09. If such assuming insurer is an association, including incorporated and individual unincorporated underwriters, such assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where such assuming insurer has its head office or is domiciled, as applicable, and is also licensed;

(iv) Such assuming insurer shall agree and provide adequate assurance to the director, in a form specified pursuant to rules and regulations adopted and promulgated by the director pursuant to section 44-416.09, as follows:

(A) Such assuming insurer shall provide prompt written notice and explanation to the director if such assuming insurer falls below the minimum requirements set forth in subdivisions (7)(a)(ii) and (iii) of this section or if any regulatory action is taken against such assuming insurer for serious noncompliance with applicable law;

(B) Such assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as the agent for service of process. The director may require that consent for service of process be provided to the director and included in each reinsurance agreement. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(C) Such assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(D) Each reinsurance agreement shall include a provision requiring such assuming insurer to provide security in an amount equal to one hundred percent of such assuming insurer's liabilities attributable to reinsurance ceded pursuant to such agreement if such assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which such judgment was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(E) Such assuming insurer shall confirm that such assuming insurer is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers and agree to notify the ceding insurer and the director

and to provide security in an amount equal to one hundred percent of such assuming insurer's liabilities to the ceding insurer if such assuming insurer enters into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subsection (6) of this section and section 44-416.07 and as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(v) Such assuming insurer or its legal successor shall provide, if requested by the director, on behalf of itself and any legal predecessors, certain documentation to the director as specified in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09;

(vi) Such assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09; and

(vii) Such assuming insurer's supervisory authority shall confirm to the director on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that such assuming insurer complies with the requirements set forth in subdivisions (7)(a)(ii) and (iii) of this section.

(b) Nothing in this subsection precludes an assuming insurer from providing the director with information on a voluntary basis.

(c)(i) The director shall timely create and publish a list of reciprocal jurisdictions.

(ii) The director's list shall include any reciprocal jurisdiction as defined under subdivisions (7)(a)(i)(A) and (B) of this section, and the director shall consider including any other reciprocal jurisdiction included on the most current list published through the National Association of Insurance Commissioners' committee process. The director may approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria developed under rules and regulations adopted and promulgated by the director pursuant to section 44-416.09.

(iii) The director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction in accordance with the process set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09, except that the director shall not remove a reciprocal jurisdiction as defined under subdivision (7)(a)(i)(A) or (B) of this section from such list. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in such jurisdiction shall be allowed if otherwise allowed pursuant to sections 44-416.05 to 44-416.10.

(d) The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The director may add an assuming insurer to such list if a jurisdiction accredited by the National Association of Insurance Commissioners pursuant to accreditation standards has added such assuming insurer to such jurisdiction's list of assuming insurers or if, upon initial eligibility, such assuming insurer submits the information to the director as required under subdivision (7)(a)(iv) of this

section and complies with any additional requirements that the director may impose by rules and regulations adopted and promulgated by the director pursuant to section 44-416.09 except to the extent that any such rules and regulations conflict with an applicable covered agreement.

(e)(i) If the director determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the director may revoke or suspend the eligibility of such assuming insurer for recognition as an assuming insurer under this subsection in accordance with procedures set forth in rules and regulations adopted and promulgated by the director pursuant to section 44-416.09.

(ii) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that such assuming insurer's obligations under the contract are secured in accordance with section 44-416.07.

(iii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by such assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that such assuming insurer's obligations under the contract are secured in a form acceptable to the director and consistent with the provisions of section 44-416.07.

(f) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that such assuming insurer post security for all outstanding ceded liabilities.

(g) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in such reinsurance agreement except as expressly prohibited by sections 44-416.05 to 44-416.10 or other applicable law or rules and regulations.

(h) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after November 14, 2020, and only with respect to losses incurred and reserves reported on or after the later of the date on which such assuming insurer has met all eligibility requirements pursuant to subdivision (7)(a) of this section or the effective date of such reinsurance agreement, amendment, or renewal.

(i) This subdivision (7)(h) does not alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this subdivision (7)(h) and the reinsurance qualifies for credit under any other applicable provision of sections 44-416.05 to 44-416.10.

(ii) Nothing in this subdivision (7)(h) shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of such agreement.

(iii) Nothing in this subdivision (7)(h) shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate such agreement.

(8) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), (5), (6), or (7) 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.

(9) 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.

(10) If the assuming insurer does not meet the requirements of subsection (2), (3), (4), or (7) 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.

(11)(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.

(12)(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 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.

(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; Laws 2020, LB774, § 1.  
Operative date November 14, 2020.

**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 support-

ing 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.

#### **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) Meets the conditions set forth in subsection (7) of section 44-416.06;

(ii) Is a certified reinsurer in this state pursuant to subdivision (6)(a) of section 44-416.06; or

(iii) 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; Laws 2020, LB774, § 2.

Operative date November 14, 2020.

## 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; asynchronous review by dermatologist; coverage.
44-7,108.	Synchronizing patient’s medications; coverage.
44-7,109.	Network provider; legislative findings; facility; prohibited acts; contract voidable.
44-7,110.	Dental services; provider network contracts; restrictions on method of payment, prohibited; third-party access; conditions; applicability of provisions.

**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.

**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.

**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

der, (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.

#### 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 speci-



fied 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; asynchronous review by dermatologist; coverage.**

(1) For purposes of this section:

(a) Asynchronous review means 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;

(b) Dermatologist means a board-certified physician who is trained to evaluate and treat individuals with benign and malignant disorders of the skin, hair, nails, and adjacent mucous membranes with a specialization in the diagnosis and treatment of skin cancers, melanomas, moles, and other tumors of the skin along with surgical techniques used in dermatology and interpretation of skin biopsies; and

(c) Telehealth has the same meaning as in section 44-312.

(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, or (c) 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 and is not provided through in-person consultation or contact between a licensed health care provider and a patient.

(3)(a) Any insurer offering any policy, certificate, contract, or plan described in subsection (2) of this section for which coverage of benefits begins on or after January 1, 2021, shall not exclude from coverage telehealth services provided by a dermatologist solely because the service is delivered asynchronously.

(b) An insurer shall reimburse a health care provider for asynchronous review by a dermatologist delivered through telehealth at a rate negotiated between the provider and the insurer.

(c) It is not a violation of this subsection for an insurer to include a deductible, copayment, or coinsurance requirement for a health care service provided through telehealth if such costs do not exceed those included for the same services provided through in-person contact.

(4) Nothing in this section shall be construed to require an insurer to provide coverage for services that are not medically necessary.

(5) 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; Laws 2020, LB760, § 1.  
Effective date November 14, 2020.

**44-7,108 Synchronizing patient's medications; coverage.**

(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 prescription medications shall apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for a partial supply if the prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications.

(2) A policy, certificate, contract, or plan provider shall not deny coverage for the dispensing of a medication that is dispensed by a network pharmacy on the basis that the dispensing is for a partial supply if the prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications. The policy, certificate, contract, or plan shall allow a pharmacy to override any denial codes indicating that a prescription is being refilled too soon for purposes of medication synchronization.

(3) To be eligible for coverage under this section, the medication:

(a) Must be covered by the enrollee's health benefit plan or have been approved by a formulary exception process;

(b) Must meet the prior authorization or utilization management criteria specifically applicable to the medication under the health benefit plan on the date the request for synchronization is made;

(c) Must be used for treatment and management of a chronic illness;

(d) Must be a formulation that can be safely split into short-fill periods to achieve medication synchronization; and

(e) Must not be a controlled substance listed in Schedule II of section 28-405.

(4) A policy, certificate, contract, or plan provider shall not use payment structures incorporating prorated dispensing fees. Dispensing fees for partially filled or refilled prescriptions shall be paid in full for each prescription dispensed, regardless of any prorated daily cost-sharing for the beneficiary or fee paid for alignment services.

(5) For purposes of this section, synchronizing the patient's medications means the coordination of medications for a patient who has been prescribed two or more medications for one or more chronic conditions so that the patient's medications are refilled on the same schedule for a given time period.

(6) 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 September 7, 2019.

**Source:** Laws 2019, LB442, § 1.

**44-7,109 Network provider; legislative findings; facility; prohibited acts; contract voidable.**

(1) The Legislature finds and declares that:

(a) Nebraskans who have a plan of health insurance, health benefits, or health care services provided through a health insurer and who receive health care services from a network provider receive such health care services at rates negotiated by the health insurer;

(b) As part of such negotiations, network providers agree to accept set reimbursement from the health insurer for the health care services provided by the network provider;

(c) The person covered by the health insurer is protected by the contract between the health insurer and the network provider from receiving a bill for the balance between the negotiated rate and a billed charge;

(d) Nebraskans need to know the network status of the provider in order to understand the plan of health insurance, health benefits, or health care services applicable to the health care services being provided by the provider; and

(e) It is necessary to regulate communication by providers to avoid communication that may mislead or cause confusion for Nebraskans receiving care from providers about their network status.

(2) For purposes of this section:

(a) Facility means an institution providing health care services or a health care setting, including, but not limited to, a hospital or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory, or imaging center, or any rehabilitation or other therapeutic health setting. Facility does not include a physician's office;

(b) Health insurer means an entity that contracts, offers to contract, or enters into an agreement 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 prepaid limited health service organization, a prepaid dental service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services. Health insurer does not include a self-funded employee benefit plan to the extent preempted by federal law or a workers' compensation insurer, risk management pool, or self-insured employer who contracts for services to be provided through a managed care plan certified pursuant to section 48-120.02; and

(c) Network provider means a facility providing services under a plan of health insurance, health benefits, or health care services if the plan either requires a person covered by the health insurer to use, or creates a financial incentive by providing a more favorable deductible, coinsurance, or copayment level for a person covered by the health insurer to use, a health care provider managed, owned, under contract with, or employed by the health insurer which administers the plan.

(3) A facility shall not advertise or hold itself out as a network provider, including any statement that the facility takes or accepts any health insurer, unless the facility is a network provider of the health insurer. A facility that advertises itself as a network provider of a health insurer shall provide a clarifying statement if the facility is not a network provider for all insurance products offered by the health insurer.

(4) Any contract entered into between a facility and a person covered by a health insurer is voidable at the option of the covered person if the facility violates this section.

**Source:** Laws 2020, LB774, § 3.

Operative date November 14, 2020.

**44-7,110 Dental services; provider network contracts; restrictions on method of payment, prohibited; third-party access; conditions; applicability of provisions.**

(1) For the purposes of this section:

(a) Contracting entity means a person or entity that enters into direct contracts with providers for the delivery of dental services in the ordinary course of business, including a dental carrier or third-party administrator;

(b) Dental carrier means a dental insurance company, a prepaid limited health service organization, or any other entity authorized to offer an insurance plan that provides dental services;

(c) Dental services means services for the diagnosis, prevention, treatment, or cure of a dental condition, illness, injury, or disease. Dental services does not include services delivered by a provider that are billed as medical services under a health insurance plan;

(d) Provider means an individual or entity that provides dental services or supplies, as defined by the health benefits plan or dental benefits plan, including a dentist or physician, but not a physician organization that leases or rents its network to a third party;

(e) Provider network contract means a contract between a contracting entity and a provider that specifies the rights and responsibilities of the contracting entity and provides for the delivery and payment of dental services to an enrollee; and

(f) Third party means a person or entity that enters into a contract with a contracting entity or with another third party to gain access to the dental services or contractual discounts of a provider network contract. Third party does not include an employer or other group for whom the dental carrier or contracting entity provides administrative services.

(2) A dental insurance plan, contract, or provider network contract with a provider shall not include any restrictions on methods of claim payment for dental services in which the only acceptable payment method is a credit card payment.

(3) A dental carrier may grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided pursuant to a provider network contract if, at the time the provider network contract is entered into or renewed, the dental carrier allows a provider who is part of a dental carrier's provider network to choose not to participate in third-party access to the provider network contract. The third-party access provision of the provider network contract shall be clearly identified. A dental carrier shall not grant a third party access to the provider network contract of any provider who does not participate in third-party access to the provider network contract.

(4) A contracting entity may grant a third party access to a provider network contract, or a provider's dental services or contractual discounts provided pursuant to a provider network contract, if the following requirements are met:

(a) The contracting entity identifies all third parties in existence in a list on its Internet web site that is updated at least once every ninety days;

(b) The provider network contract specifically states that the contracting entity may enter into an agreement with a third party that would allow the third party to obtain the contracting entity's rights and responsibilities as if the third party were the contracting entity, and when the contracting entity is a dental carrier, the provider chose to participate in third-party access at the time the provider network contract was entered into; and

(c) The third party accessing the provider network contract agrees to comply with all applicable terms of the provider network contract.

(5) A provider is not bound by and is not required to perform dental treatment or services under a provider network contract granted to a third party in violation of this section.

(6) Subsections (3), (4), and (5) of this section shall not apply if any of the following is true:

(a) The provider network contract is for dental services provided to a beneficiary of the federal medicare program pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., or the federal medicaid program pursuant to Title XIX of the federal Social Security Act, 42 U.S.C. 1396 et seq., as such sections existed on January 1, 2020; or

(b) Access to a provider network contract is granted to a dental carrier or an entity operating in accordance with the same brand licensee program as the contracting entity or to an entity that is an affiliate of the contracting entity. A list of the contracting entity's affiliates shall be made available to a provider on the contracting entity's web site.

(7) This section shall take effect on January 1, 2021, and shall apply to all provider network contracts that are delivered, issued for delivery, or executed in this state on or after November 14, 2020.

**Source:** Laws 2020, LB774, § 4.

Operative date November 14, 2020.

## ARTICLE 9

### PRIVACY OF INSURANCE CONSUMER INFORMATION ACT

#### Section

44-905. Annual privacy notice to consumers; when required.

44-915. Notice and opt out requirements; additional exceptions.

#### **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.

**44-915 Notice and opt out requirements; additional exceptions.**

The requirements for initial notice to consumers in subdivision (1)(b) of section 44-904, the opt out in sections 44-907 and 44-910, and service providers and joint marketing in section 44-913 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer if the consumer has not revoked the consent or direction;

(2)(a) To protect the confidentiality or security of a licensee’s records pertaining to the consumer, service, product, or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee’s compliance with industry standards, and the licensee’s attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with 12 U.S.C. 3401 et seq., as such sections existed on January 1, 2019, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Secretary of the

Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II, and 12 U.S.C. Chapter 21, as such federal laws existed on January 1, 2019, a state insurance authority, a state banking and state securities authority, and the Federal Trade Commission, to self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(a) To a consumer reporting agency in accordance with 15 U.S.C. 1681 et seq., as such sections existed on January 1, 2019; or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7)(a) To comply with federal, state, or local laws, rules, and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

**Source:** Laws 2001, LB 52, § 15; Laws 2019, LB258, § 14.

## 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 reviewability



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.

**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.

**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.

**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.

**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.



**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

44-1984. Limitations on powers.

#### (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.

#### **44-1984 Limitations on powers.**

(1) No insurer that transacts any line of business other than title insurance shall be eligible for the issuance or renewal of a certificate of authority to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or authorized to transact any other line of business.

(2)(a) Notwithstanding subsection (1) of this section, and to the extent such coverage is lawful within this state, a title insurer shall issue closing or settlement protection covering a proposed insured if the title insurer or its title insurance agent engages in any escrow, settlement, or closing services relating to the issuance of a title insurance commitment or title insurance policy to a proposed insured. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and shall indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance agent:

(i) Theft of settlement funds; and

(ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

(b) The director may prescribe or approve a required charge for providing the coverage.

(c) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

**Source:** Laws 1997, LB 53, § 7; Laws 2002, LB 1139, § 20; Laws 2004, LB 155, § 1; Laws 2019, LB221, § 1.

## **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.

**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 24

### NEBRASKA PROPERTY AND LIABILITY INSURANCE GUARANTY ASSOCIATION ACT

#### Section

- 44-2401. Purpose of act.
- 44-2403. Terms, defined.
- 44-2406. Claims; filing; determination.
- 44-2407. Association; duties; powers; enumerated.
- 44-2409. Director; duties.
- 44-2410. Assignment of rights; notice of claims; settlement; effect; statement of claims; file with director.
- 44-2411. Exhaustion of remedies.
- 44-2415. Exemption from liability.
- 44-2418. Act, how cited.
- 44-2419. Order of liquidation; stay.

#### **44-2401 Purpose of act.**

The purpose of the Nebraska Property and Liability Insurance Guaranty Association Act is to provide a method for the payment of certain claims against insolvent insurance companies, as defined in the act, to avoid unnecessary delay in payment of such claims, to avoid financial loss to claimants or to policyholders, to assist in the detection and prevention of insurer insolvencies, and to provide an association of insurers against which the cost of such protection may be assessed in an equitable manner.

**Source:** Laws 1971, LB 722, § 1; Laws 2019, LB380, § 1.

**44-2403 Terms, defined.**

As used in the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account shall mean any one of the three accounts created by section 44-2404;

(2) Director shall mean the Director of Insurance or his or her duly authorized representative;

(3) Association shall mean the Nebraska Property and Liability Insurance Guaranty Association created by section 44-2404;

(4)(a) Covered claim shall mean an unpaid claim as provided for in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and which arises out of and is within the coverage of an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission;

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. Covered claim shall also not include any amount as punitive or exemplary damages or any amount claimed for incurred but not reported damages. Covered claim shall also not include any claim filed with the guaranty fund after the earlier of twenty-five months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver. This subdivision (4)(b) shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after September 2, 1977;

(6) Member insurer shall mean any person licensed to write any kind of insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies by the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which the Nebraska Property and Liability Insurance Guaranty Association Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, limited liability company, association, voluntary organization, or reciprocal insurance exchange; and

(9) Insurance shall mean those contracts defined in section 44-102.

**Source:** Laws 1971, LB 722, § 3; Laws 1974, LB 1014, § 1; Laws 1977, LB 366, § 5; Laws 1988, LB 700, § 1; Laws 1989, LB 319, § 71; Laws 1993, LB 121, § 239; Laws 2019, LB380, § 2.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**44-2406 Claims; filing; determination.**

(1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member insurer becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of such dates, but such obligation shall include only the amount of each covered claim that does not exceed three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for the amount of each covered claim that does not exceed ten thousand dollars per policy.

(2) The director shall transmit to the association all covered claims timely filed with him or her pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall thereupon be considered to have been designated the director's representative pursuant to the act, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any

amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself or herself had he or she not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident, or disability insurance, under any salary or wage continuation program under which he or she is entitled to benefits, or from his or her employer in the form of workers' compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his or her rights to any such benefits shall forfeit all rights which he or she may have by the provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(4) A third party having a covered claim against any insured of an insolvent insurer may file such claim with the director pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent insurer does not afford coverage or unless the claimant, within thirty days from the date of filing his or her claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

**Source:** Laws 1971, LB 722, § 6; Laws 1977, LB 366, § 6; Laws 1981, LB 275, § 1; Laws 1986, LB 811, § 23; Laws 1988, LB 352, § 64; Laws 1988, LB 700, § 2; Laws 1989, LB 319, § 72; Laws 2019, LB380, § 3.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**44-2407 Association; duties; powers; enumerated.**

(1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers separately for each account in the amounts necessary to pay the obligations of the association under section 44-2406, the expenses of handling covered claims, the cost of examinations under sections 44-2412 and 44-2413, and other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of such member insurer, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date of the assessment. The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member



insurer in any one year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. Except for such administrative assessment, no member insurer may be assessed in any year on any account an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member insurers that received larger assessments by virtue of such deferment or, in the discretion of any such insurer, credited against future assessments. No member insurer may pay a dividend to shareholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility, except that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and such other expenses of the association as are authorized by the Nebraska Property and Liability Insurance Guaranty Association Act;

(d) Issue to each insurer paying an assessment under this section a certificate of contribution in appropriate form and terms as prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. The insurer may offset against its premium and related retaliatory tax liability to this state pursuant to sections 44-150 and 77-908 accrued with respect to business transacted in such year an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year after the year of issuance. If the association recovers any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by sections 44-150 and 77-908, such recovered sum shall be paid by the association to the director who shall handle such funds in the same manner as provided in Chapter 77, article 9;

(e) Be deemed the insolvent insurer to the extent of the association's obligation for covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer, subject to the limitations provided in the act, as if the insurer had not become insolvent, with the exception that the liquidator shall retain the sole right to recover any reinsurance proceeds. The association's rights under this section include, but are not limited to, the right to pursue and retain salvage and subrogation recoveries on paid covered claim obligations to the extent paid by the guaranty fund; and

(f) Have access to insolvent insurer records. The liquidator of an insolvent insurer shall permit access by the association or its authorized representatives, and by any similar organization in another state or its authorized representa-

tives, to the insolvent insurer's records which are necessary for the association or such similar organization in carrying out its functions with regard to covered claims. In addition, the liquidator shall provide the association or its representative or such similar organization with copies of such records upon the request and at the expense of the association or similar organization.

(2) The association may:

(a) Appear in, defend, and appeal any action;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(c) Borrow funds necessary to effect the purposes of the Nebraska Property and Liability Insurance Guaranty Association Act in accord with the plan of operation;

(d) Sue or be sued, and such power to sue shall include the power and right to intervene as a party before any court that has jurisdiction over an insolvent insurer as defined by such act;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of such act;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of such act; and

(g) Bring any action against any third-party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all files, records, and electronic data related to an insolvent insurer that is appropriate or necessary for the association, or a similar organization in another state, to carry out duties under such act.

**Source:** Laws 1971, LB 722, § 7; Laws 1977, LB 366, § 7; Laws 1986, LB 1114, § 5; Laws 1987, LB 302, § 5; Laws 1989, LB 92, § 199; Laws 2000, LB 930, § 6; Laws 2019, LB380, § 4.

**44-2409 Director; duties.**

(1) The director shall:

(a) Notify the association of the existence of any insolvent insurer not later than three days after he or she receives notice of the determination of the insolvency and order of liquidation pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; and

(b) Upon request of the board of directors of the association, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

(a) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due, unless such payment was deferred by the association in the manner provided in the Nebraska Property and Liability Insurance Guaranty Association Act, or fails to comply with the plan of operation; and

(b) Revoke the designation of any servicing facility if he or she finds the claims are not being handled in good faith. Designation of a new servicing

facility shall be accomplished in the manner set out in subdivision (1)(b) of section 44-2407.

**Source:** Laws 1971, LB 722, § 9; Laws 1989, LB 319, § 73; Laws 2019, LB380, § 5.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**44-2410 Assignment of rights; notice of claims; settlement; effect; statement of claims; file with director.**

(1) Any person recovering under the Nebraska Property and Liability Insurance Guaranty Association Act shall be deemed to have assigned his or her rights under the policy to the association to the extent of such recovery from the association. Every insured or claimant seeking recovery under the act shall be required to cooperate with the association to the same extent he or she would have been required to cooperate with the insolvent insurer.

(2) Notice of claims to the liquidator or receiver of the insolvent member insurer shall be deemed notice to the association or its agent, and a list of covered claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(3) The receiver, liquidator, or statutory successor of an insolvent member insurer shall be bound by settlements of covered claims by the association or a similar organization in another state.

(4) The association shall periodically file with the director statements of covered claims paid by the association and estimates of anticipated claims against the association.

**Source:** Laws 1971, LB 722, § 10; Laws 1977, LB 366, § 8; Laws 2019, LB380, § 6.

**44-2411 Exhaustion of remedies.**

(1) Any person having a claim against any insurer under any provisions of any insurance policy, which claim is also a covered claim against an insolvent insurer under the Nebraska Property and Liability Insurance Guaranty Association Act, shall be required to exhaust all rights under such policy before the association is obligated to pay the covered claim under such act. Any amount payable on a covered claim by the provisions of such act shall be reduced by the amount of such recovery under any other insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association, or its equivalent, shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery pursuant to the Nebraska Property and Liability Insurance Guaranty Association Act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

**Source:** Laws 1971, LB 722, § 11; Laws 1986, LB 811, § 24; Laws 2019, LB380, § 7.

**44-2415 Exemption from liability.**

There shall be no liability on the part of, and no cause of action of any nature shall rise against, any member insurer, the association or its agents or employees, the board of directors of the association, any servicing facility designated by the association in accordance with the Nebraska Property and Liability Insurance Guaranty Association Act or the agents or employees or officers of such servicing facility, or the director or his or her representatives for any action taken by them in the performance of their powers and duties under the act.

**Source:** Laws 1971, LB 722, § 15; Laws 2019, LB380, § 8.

**44-2418 Act, how cited.**

Sections 44-2401 to 44-2419 shall be known and may be cited as the Nebraska Property and Liability Insurance Guaranty Association Act.

**Source:** Laws 1971, LB 722, § 18; Laws 1974, LB 1014, § 3; Laws 2019, LB380, § 9.

**44-2419 Order of liquidation; stay.**

All proceedings arising out of a claim under a policy of insurance written by an insolvent insurer shall be stayed for one hundred twenty days from the date of entry of the order of liquidation to permit proper defense by the association of all such pending causes of action. Nothing in this section shall be deemed to limit the powers of a receiver appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or to stay any proceeding brought pursuant to such act.

**Source:** Laws 2019, LB380, § 10.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**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.

**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.

### ARTICLE 27

#### NEBRASKA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Section	
44-2702.	Terms, defined.
44-2703.	Coverages authorized.
44-2704.	Act; how construed.
44-2706.	Board of directors; members; how selected; voting rights; represent insurers; expenses.
44-2707.	Association; powers and duties; enumerated.
44-2708.	Assessments against member insurers; procedure; effect; protest or appeal.
44-2709.	Association; plan of operation; requirements.
44-2713.	Impaired or insolvent insurer; effect; procedure.
44-2718.	Stay of proceedings against impaired insurer; purpose; association; apply to set aside judgment or defend.
44-2719.01.	Using name of association; when prohibited.
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 certificate under a group policy or contract, or portion thereof, 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) Extra-contractual claims include, but are not limited to, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs;

(9) Benefit plan means a specific employee, union, or association of natural persons benefit plan;

(10) Health benefit plan means any hospital or medical expense policy or certificate, health maintenance organization subscriber contract, or any other similar health contract. Health benefit plan does not include:

(a) Accident only insurance;

(b) Credit insurance;

(c) Dental only insurance;

(d) Vision only insurance;

(e) Medicare supplement insurance;

(f) Benefits for long-term care, home health care, community-based care, or any combination thereof;

(g) Disability income insurance;

(h) Coverage for onsite medical clinics; or

(i) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates;

(11) 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 and (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(12) 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;

(13) Member insurer means an insurer or health maintenance organization licensed or that holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided for under section 44-2703. Member insurer includes any insurer or health maintenance organization whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include:

(a) A hospital or medical service organization, whether profit or nonprofit;

(b) A fraternal benefit society;

(c) A mandatory state pooling plan;

(d) A mutual assessment company or other person that operates on an assessment basis;

(e) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;

(f) An insurance exchange;

(g) An organization that has a certificate or license limited to the issuance of charitable gift annuities;

(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 (13)(a) through (h) of this section;

(14) 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;

(15) Owner of a policy or contract, policyholder, policy owner, and contract owner mean 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 member insurer. Owner, policy owner, and contract owner do not include persons with a mere beneficial interest in a policy or contract;

(16) Person means any individual, corporation, partnership, limited liability company, association, government body or entity, or voluntary organization;

(17) Plan sponsor means:

(a) In the case of a benefit plan established or maintained by a single employer, the employer;

(b) In the case of a benefit plan established or maintained by an employee organization, the employee organization; or

(c) In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan;

(18) Premiums means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits, and 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 policy or 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 or contract 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;

(19)(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 or contract for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall in its reasonable judgment 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 (19)(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;

(20) Receivership court means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer;

(21) 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, territory, or protectorate 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;

(22) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

(23) 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;

(24) 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

(25) 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; Laws 2019, LB159, § 1.

**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, including health care providers rendering services covered under health insurance policies or certificates, 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 member 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 or health maintenance organization 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, enrollee, 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 insurance, health insurance, which for purposes of the act includes health maintenance organization subscriber contracts and certificates, 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, except any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits, 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 association becomes obligated with respect to the policy or contract, 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 association became obligated; and

(B) On and after the date on which the association becomes obligated with respect to the policy or contract, 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, but not limited to, 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 member insurer to the enrollee, contract holder, contract owner, or policy owner, including, without limitation:
  - (A) Claims based on marketing materials;
  - (B) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form, filing, or approval requirements;
  - (C) Misrepresentations of or regarding policy or contract 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 hospital or medical service organization, whether profit or nonprofit;

- (B) A fraternal benefit society;
  - (C) A mandatory state pooling plan;
  - (D) An unincorporated mutual association;
  - (E) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;
  - (F) An insurance exchange; or
  - (G) An organization that has a certificate or license limited to the issuance of charitable gift annuities;
- (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, commonly known as Medicare Part C and D, or Title 42, Chapter 7, Subchapter XIX, commonly known as Medicaid, of the United States Code, any regulations issued pursuant thereto, or any other policy or contract issued pursuant to the Medical Assistance Act; 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 health benefit plans; (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, or health benefit plans, 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 health benefit plans 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; and

(v) For purposes of the act, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, reissued, 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; Laws 2019, LB159, § 2.

**Cross References**

Medical Assistance Act, see section 68-901.

**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.

**44-2706 Board of directors; members; how selected; voting rights; represent insurers; expenses.**

(1) The board of directors of the association shall consist of not less than seven nor more than eleven members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the director shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the director may appoint the initial members.

(2) In approving selections or in appointing members to the board, the director shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board as provided in sections 81-1174 to 81-1177 for state employees but shall not otherwise be compensated by the association for their services.

**Source:** Laws 1975, LB 217, § 6; Laws 1981, LB 204, § 72; Laws 2019, LB159, § 3.

**44-2707 Association; powers and duties; enumerated.**

In addition to the powers and duties enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(1) If a member insurer is an impaired insurer, the association may, at its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the director:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all the covered policies or contracts of the impaired insurer; and

(b) Provide such money, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1)(a) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1)(a) of this section;

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the covered policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge the association's duties; or

(b) Provide benefits in accordance with the following provisions:

(i) With respect to covered policies and contracts, assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under these policies or contracts or forty-five days but not less than thirty days after the date on which the association becomes obligated with respect to the policies and contracts; and

(B) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date if any under the policies or contracts or one year but not less than thirty days after the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds, enrollees, or annuitants, for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, thirty days' notice of the termination made pursuant to subdivision (2)(b)(i) of this section of the benefits provided;

(iii) With respect to nongroup policies and contracts covered by the association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured, enrolled, or an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(b)(iv) of this section if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class;

(iv)(A) In providing the substitute coverage required under subdivision (2)(b)(iii) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates, subject to the prior approval of the director.

(B) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(C) The association may reinsure any alternative or reissued policy or contract;

(v)(A) Alternative policies or contracts adopted by the association shall be subject to the approval of the director. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be actuarially justified and set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the director;

(vii) The association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy owner, the insured, the enrollee, or the association; and

(viii) When proceeding under subdivision (2)(b) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the associa-

tion shall assure the payment or crediting of a rate of interest consistent with subdivision (2)(b)(iii) of section 44-2703;

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under the act with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of the act;

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. If the liquidator of the insolvent insurer requests, the association shall provide a report to the liquidator regarding such premiums collected by the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order;

(5) The protection provided by the act shall not apply if guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state;

(6) In carrying out its duties under subdivision (2) of this section, the association may, subject to approval by a court in this state:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if:

(i) The association finds that the amounts which can be assessed under the act are less than the amounts needed to assure full and prompt performance of the association's duties under the act; or

(ii) That the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest; and

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts in addition to any contractual provisions for deferral of cash or policy loan value.

If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court;

(7) A deposit in this state which is held pursuant to law or required by the director for the benefit of creditors, including policy and contract owners, and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 44-4852, shall be promptly paid to the association. The association shall be entitled to retain a portion of such amount equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate



amount of all policy or contract owners' claims in this state related to that insolvency. The association shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subdivision. Any amount paid to the association less the amount not retained by it shall be treated as a distribution of estate assets pursuant to section 44-4834 or similar provision of the state of domicile of the impaired or insolvent insurer;

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subdivision (2) of this section, the director shall have the powers and duties of the association under the act with respect to the insolvent insurer;

(9) At the request of the director, the association may give assistance and advice to the director concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer;

(10) The association shall have standing to appear before any court or administrative agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under the act or with jurisdiction over any person or property against which the association may have rights through subrogation or other basis. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person against whom the association may have rights through subrogation or otherwise;

(11)(a) Any person receiving benefits under the act shall be deemed to have assigned his or her rights under and any causes of action against any person for losses arising under the covered policy or contract to the association to the extent of the benefits received because of the act whether the benefits are payments of, or on account of, contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights by any enrollee, payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act upon such person.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under such act.

(c) In addition to subdivisions (11)(a) and (b) of this section, the association shall have all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contracts. Such common-law rights and equitable or legal remedies include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to the act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the

annuity or payment therefor. Nothing in this subdivision shall include any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

(d) If the provisions of this subdivision are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts or portion of such amount covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in subdivision (11) of this section, the person shall pay to the association the portion of the recovery attributable to the policies or contracts or any portion of such recovery covered by the association;

(12) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 44-2708 and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association and to perform such other functions as become necessary or proper under the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims;

(g) Exercise, for the purposes of the act and to the extent approved by the director, the powers of a domestic life or health insurer or health maintenance organization, but in no case may the association issue insurance policies or contracts other than those issued to perform its obligations under the act;

(h) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(i) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under the act with respect to the person, and the person shall promptly comply with the request;

(j) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under the act;

(k) Take other necessary or appropriate action to discharge its duties and obligations under the act or to exercise its powers under the act; and

(l) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association;

(13)(a) At any time within one hundred eighty days after the coverage date, the association may elect to succeed to the rights and obligations of the ceding member insurer that accrue on or after the coverage date and that relate to policies, contracts, or annuities covered, in whole or in part, by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. For purposes of this section, coverage date means the date on which the association becomes responsible for the obligations of a member insurer. The election shall be effected by the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, sending written notice, return receipt requested, to the affected reinsurers. To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, as soon as possible after commencement of formal delinquency proceedings copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts. If the association makes an election, subdivisions (13)(a)(i) through (vi) of this section apply to the reinsurance contracts selected by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the coverage date and shall be responsible for the performance of all other obligations to be performed after the coverage date in each case that relates to policies, contracts, or annuities covered, either in whole or in part, by the association. The association may charge policies, contracts, or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the coverage date and that relate to policies, contracts, or annuities covered by the association, in whole or in part, except that on receiving such amounts, the association shall pay to the beneficiary under the policy, contract, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of: (A) The amount received by the association, and (B) the excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy, contract, or annuity, less the retention by the insurer applicable to the loss or event;

(iii) Within thirty days after the association's election, the association and each reinsurer under the contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election with respect to policies, contracts, or annuities covered, in whole or in part, by the association, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the reinsurer during the period between the

coverage date and the date of the association's election. The association or reinsurer shall pay the net balance due the other within five days after the completion of such calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to subdivision (13)(a)(ii) of this section, the receiver, rehabilitator, or liquidator shall, as promptly as practicable, pay such amounts to the association. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law;

(iv) If the association, or receiver on behalf of the association, within sixty days after the election, pays the unpaid premiums due for periods both before and after the coverage date that relate to policies, contracts, or annuities covered by the association in whole or in part, the reinsurer shall not be entitled to terminate the reinsurance agreements for failure to pay premiums to the extent that the agreements relate to policies, contracts, or annuities covered by the association either wholly or partially and may not set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association;

(v) During the period from the coverage date until the election date or, if the election date does not occur, one hundred eighty days after the date of the order of liquidation, (A) neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (13)(a) of this section, whether for periods prior to or after the date of the order of liquidation, and (B) the reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records upon reasonable request, provided that once the association has elected to assume a reinsurance contract, the rights and obligations of the parties shall be governed by subdivision (13)(a) of this section; and

(vi) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (13)(a) of this section, the association shall have no rights or obligations, in each case for periods both before and after the coverage date, with respect to the reinsurance contract;

(b) When policies, contracts, or annuities or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (13)(a) of this section, subject to the following:

(i) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(ii) The obligations described in subdivision (13)(a) of this section shall not apply on and after the date the reinsurance contract is transferred to the third party insurer; and

(iii) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer;

(c) The provisions of subdivision (13) of this section shall supersede the provisions of any law of this state or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds on account of losses or events that occur in periods after the coverage date to the receiver;

liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as otherwise expressly set forth in subdivision (13) of this section, nothing in such subdivision shall alter or modify the terms and conditions of any reinsurance contract. Nothing in the subdivision shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in such subdivision shall give a policyowner, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks;

(14) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of the act in an economical and efficient manner;

(15) If the association has arranged or offered to provide the benefits of the act to a covered person under a plan or arrangement that fulfills the association's obligations under the act, such person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement; and

(16) Venue in an action against the association arising under the act shall be in the district court of Lancaster County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under the act.

**Source:** Laws 1975, LB 217, § 7; Laws 1986, LB 593, § 7; Laws 2001, LB 360, § 16; Laws 2003, LB 216, § 11; Laws 2019, LB159, § 4.

**44-2708 Assessments against member insurers; procedure; effect; protest or appeal.**

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due, and the assessments shall accrue interest at the rate calculated pursuant to section 45-103 on and after the due date.

(2) There shall be two classes of assessments as follows:

(a) Class A assessments shall be authorized and called for the purpose of meeting administrative costs and other general expenses, including expenses for examinations conducted under the authority of subdivision (3) of section 44-2711. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent domestic insurer.

(3)(a) The amount of any Class A assessment for each account shall be determined by the board and may be authorized and called on a pro rata or non-pro-rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The amount of any Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances. The amount of any Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the director. The methodology shall provide for fifty percent of the assessment to be allocated to accident and health member insurers and fifty percent to be allocated to life and annuity member insurers.

(b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account bears, for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, to such premiums received on business in this state for such calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of the Nebraska Life and Health Insurance Guaranty Association Act. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth pursuant to this subsection, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a) Subject to the provisions of subdivision (b) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for the life insurance account, the annuity account, and the health account shall not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(b) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (a) of this subsection shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(c) If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year in an account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by the act.

(d) The board may provide in the plan of operation a method of allocating funds among other claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(e) If the maximum assessment for an account in one year does not provide an amount sufficient to carry out the responsibilities of the association, then the board shall access the other accounts for the necessary additional amount, subject to the provisions of subdivision (5)(a) of this section.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance or health maintenance organization business within the scope of the act, to consider the amount reasonably necessary to meet its assessment obligations under the act.

(8) The association shall issue to each insurer paying a Class B assessment under the act a certificate of contribution in a form prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the director may approve.

(9)(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. A statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest shall accompany the payment.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days after receipt of notice of the final decision, the protesting member insurer may appeal that final action to the director.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the director for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section, and member insurers shall promptly comply with a request.

**Source:** Laws 1975, LB 217, § 8; Laws 1986, LB 593, § 8; Laws 2000, LB 930, § 7; Laws 2001, LB 360, § 17; Laws 2019, LB159, § 5.

**44-2709 Association; plan of operation; requirements.**

(1)(a) The association shall submit to the director a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the director or, if it has not been disapproved by the director, thirty days after submission.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty days following August 24, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the Nebraska Life and Health Insurance Guaranty Association Act. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under section 44-2706;

(c) Establish regular places and times for meetings of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors shall be made and submitted to the director;

(f) Establish any additional procedures for assessments pursuant to section 44-2708;

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;



(h) Establish procedures whereby a member of the board of directors may be removed for cause including, but not limited to, instances in which a member insurer becomes an impaired or insolvent insurer; and

(i) Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (12)(c) of section 44-2707 and section 44-2708, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation made under this subsection shall take effect only with the approval of both the board of directors and the director and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by the Nebraska Life and Health Insurance Guaranty Association Act.

**Source:** Laws 1975, LB 217, § 9; Laws 1986, LB 593, § 9; Laws 2001, LB 360, § 18; Laws 2019, LB159, § 6.

**44-2713 Impaired or insolvent insurer; effect; procedure.**

(1) Nothing in the Nebraska Life and Health Insurance Guaranty Association Act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties pursuant to section 44-2707. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities as provided in section 44-2714.

(3) For the purpose of carrying out its obligations under the Nebraska Life and Health Insurance Guaranty Association Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision (11) of section 44-2707. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by the act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired or insolvent insurer, and any other party with a bona fide

interest in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to shareholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act for any person to make use in any manner of the protection afforded by the Nebraska Life and Health Insurance Guaranty Association Act in the sale of insurance.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b), (c), and (d) of this subsection.

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions such person received. Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions such person would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer.

(e) If any person liable under subdivision (c) of this subsection is insolvent, all affiliates of such person at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

**Source:** Laws 1975, LB 217, § 13; Laws 1986, LB 593, § 12; Laws 1989, LB 92, § 217; Laws 2001, LB 360, § 19; Laws 2019, LB159, § 7.

**Cross References**

Unfair Insurance Trade Practices Act, see section 44-1521.

**44-2718 Stay of proceedings against impaired insurer; purpose; association; apply to set aside judgment or defend.**

All proceedings in which the impaired insurer is a party in any court in this state shall be stayed one hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default, the

association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits. Nothing in this section shall be deemed to limit the powers of a receiver appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, or to stay any proceeding brought pursuant to such act.

**Source:** Laws 1975, LB 217, § 18; Laws 2019, LB159, § 8.

**Cross References**

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

**44-2719.01 Using name of association; when prohibited.**

No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio station or television station, or in any other way any advertisement, announcement, or statement, written or oral, which uses the existence of the Nebraska Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Nebraska Life and Health Insurance Guaranty Association Act, except that this section shall not apply to the Nebraska Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

**Source:** Laws 1986, LB 593, § 14; Laws 2019, LB159, § 9.

**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, contract owners, or enrollees of the insolvent or impaired member insurer.

**Source:** Laws 1986, LB 593, § 15; Laws 2012, LB887, § 19; Laws 2019, LB159, § 10.

**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 organi-



zation 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**

44-3302. Terms, defined.

44-3303. Insurance laws; situations; not applicable.

44-3312. Legal service insurance corporation; articles of incorporation; contents.

**44-3302 Terms, defined.**

As used in sections 44-3301 to 44-3327, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance;

(2) Department shall mean the Department of Insurance;

(3) Insurer shall mean any person, as defined in section 49-801, authorized to conduct an insurance business as an insurer in this state, including corporations organized under sections 44-3312 and 44-3313; and

(4) Legal expense insurance shall mean the assumption of a contractual obligation to pay or reimburse for specified legal services or specified legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. Legal expense insurance includes arrangements that create reasonable expectations of enforceable rights, but does not include the provision of or reimbursement for legal services incidental to other insurance coverages. The payment of only an administrative fee to an attorney shall not be considered payment or reimbursement for specified legal services or specified legal expenses for the purposes of this definition.

**Source:** Laws 1979, LB 52, § 2; Laws 2019, LB26, § 1.

**44-3303 Insurance laws; situations; not applicable.**

The insurance laws of this state, including sections 44-3301 to 44-3327, do not apply to:

(1) Retainer contracts made by attorneys at law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters;

(2) Plans providing no benefits other than consultation and advice in connection with or in combination with referral services;

(3) The furnishing of limited legal assistance on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, education, or similar relationship;

(4) The furnishing of legal assistance by labor unions and other employee organizations to their members in matters relating to employment or occupation;

(5) Employee welfare benefit plans to the extent that state laws are superseded by Section 514 of the Employee Retirement Income Security Act of 1974;

(6) Automobile club service contracts which supply incidental or limited legal services or reimbursement for legal services in automobile related matters; and

(7) Plans that do not include the assumption of risk or obligation to pay or reimburse for specified legal services or specified legal expenses. The payment of only an administrative fee to an attorney shall not be considered payment or reimbursement for specified legal services or a specified legal expense.

**Source:** Laws 1979, LB 52, § 3; Laws 2019, LB26, § 2.

**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

44-3520. Act, how cited.

44-3521. Terms, defined.

44-3523. Motor vehicle service contract reimbursement insurance policy; requirements; failure to timely provide covered service; effect.

44-3524. Cease and desist order; notice; hearing; injunction.

44-3526. Act; exemptions.

44-3527. Motor vehicle service contract; filing; form; requirements; enforcement of act; procedure.

(b) MOTOR VEHICLES

**44-3520 Act, how cited.**

Sections 44-3520 to 44-3527 shall be known and may be cited as the Motor Vehicle Service Contract Reimbursement Insurance Act.

**Source:** Laws 1990, LB 1136, § 92; Laws 2020, LB774, § 5.  
Operative date January 1, 2021.

**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 issued to a motor vehicle service contract provider to either provide reimbursement to the motor vehicle service contract provider under the terms of the insured motor vehicle service contracts issued or sold by the motor vehicle service contract provider or, in the event of the motor vehicle service contract provider's nonperformance, to pay on behalf of the motor vehicle service contract provider all covered contractual obligations incurred by the motor vehicle service contract provider under the terms of the insured motor vehicle service contracts issued or sold by the motor vehicle service contract provider in this state;

(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; Laws 2020, LB774, § 6.

Operative date January 1, 2021.

**44-3523 Motor vehicle service contract reimbursement insurance policy; requirements; failure to timely provide covered service; effect.**

(1) No motor vehicle service contract reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy conspicuously states that the insurer will either reimburse or pay on behalf of the motor vehicle service contract provider any covered sums the motor vehicle service contract provider is legally obligated to pay or, in the event of the provider's nonperformance, will provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider in this state.

(2) In the event covered service is not provided by the motor vehicle service contract provider within sixty days of proof of loss by the service contract holder, the service contract holder is entitled to apply directly to the insurer providing the motor vehicle service contract reimbursement insurance policy.

(3) The motor vehicle service contract reimbursement insurance policy shall completely and fully reimburse or pay on behalf of the motor vehicle service contract provider all repair costs incurred under the motor vehicle service contract. All unearned premium reserves and claim reserve funds shall be established as liabilities on the books of the insurer in accordance with statutory accounting practices. This subsection shall not apply to programs directly obligating an automobile dealer to perform under the motor vehicle service contract.

**Source:** Laws 1990, LB 1136, § 95; Laws 2006, LB 875, § 6; Laws 2020, LB774, § 7.

Operative date January 1, 2021.

**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.

**44-3527 Motor vehicle service contract; filing; form; requirements; enforcement of act; procedure.**

(1) For purposes of this section, conspicuously means writing, displaying, or presenting a term in such a way that a reasonable person against whom it is to operate shall notice. Conspicuously stated terms include:

(a) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(b) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(2) It is the responsibility of the motor vehicle service contract provider issuing the motor vehicle service contract to file a true and correct copy of the motor vehicle service contract form, motor vehicle service contract reimbursement insurance policy, and the notice of filing form with the Department of Insurance. Such notice of filing shall be made on a form provided by the department and must contain the name and address of the business entity filing the form as well as a contact person, the names and addresses of entities from which the service contract forms were purchased, the names and addresses of insurers insuring the provider's contractual liability, and the names and ad-

dresses of sales personnel. It is the responsibility of the motor vehicle service contract provider to notify the department on a continuing basis of any changes in the filings.

(3) Every motor vehicle service contract shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall not be issued, sold, or offered for sale in this state unless the contract:

(a) Identifies the motor vehicle service contract provider and the service contract holder;

(b) Conspicuously states that the obligations of the motor vehicle service contract provider to the service contract holder are guaranteed under a service contract reimbursement insurance policy;

(c) Conspicuously states the name and address of the insurance company issuing the reimbursement insurance policy;

(d) Sets forth the total purchase price and the terms under which it is to be paid;

(e) Sets forth the procedure for making a claim, including an address and telephone number for claim assistance;

(f) Conspicuously states the existence of a deductible amount, if any;

(g) Clearly specifies the merchandise or services, or both, to be provided and any limitations, exceptions, or exclusions;

(h) Sets forth all of the obligations and duties of the service contract holder, including, but not limited to, the duty to prevent any further damage to the vehicle and the obligation to notify the provider in advance of any repair, if any;

(i) Sets forth any terms, restrictions, or conditions governing transferability of a service contract, if any;

(j) Sets forth applicable cancellation requirements; and

(k) States that the service contract holder has the right to file a claim directly with the insurer in the event of nonperformance by the motor vehicle service contract provider in the event covered service is not provided by the motor vehicle service contract provider within sixty days of proof of loss being filed by the service contract holder with the service contract provider, along with the method, requirements, and instructions for making such a claim.

(4) If the director determines that a motor vehicle service contract provider has failed to comply with the Motor Vehicle Service Contract Reimbursement Insurance Act, the director may issue an order to cease and desist from selling or offering for sale motor vehicle service contracts. Accompanied with that order shall be a notice of hearing setting forth the time, date, place, and issues to be heard. Such hearing shall take place not less than ten days nor more than thirty days from the date from the issuance of the order to cease and desist. Upon the failure of a motor vehicle service contract provider to obey an order to cease and desist 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 that provider from selling or offering for sale motor vehicle service contracts.

(5) If any provision of this section is declared invalid, the remainder shall not be affected.

**Source:** Laws 2020, LB774, § 8.

Operative date January 1, 2021.

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.

**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.

**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.

**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.

#### **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.

#### **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.

**§ 44-4047**

**INSURANCE**

Section

- 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.

**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 insurance, 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.

**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.

**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.

**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 non-licensable 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 disseminating 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.

**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.

**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.

tion. 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 under-

standing 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.

## 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 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, liquidation, 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.

**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 50**

**CHILDREN OF NEBRASKA HEARING AID ACT**

Section

- 44-5001. Act, how cited.
- 44-5002. Legislative findings and declarations.
- 44-5003. Terms, defined.
- 44-5004. Health insurance plan; coverage required; items and services; exemption from act.
- 44-5005. Rules and regulations.

**44-5001 Act, how cited.**

Sections 44-5001 to 44-5005 shall be known and may be cited as the Children of Nebraska Hearing Aid Act.

**Source:** Laws 2019, LB15, § 1.

**44-5002 Legislative findings and declarations.**

The Legislature finds and declares that:

(1) For a child impacted by hearing loss, his or her ability to develop language can be improved by the consistent use of a hearing aid;

(2) Private insurance benefits for children's hearing aids will ultimately provide long-term savings to the State of Nebraska by decreasing the need for special education services and increasing the academic success of children impacted by hearing loss; and

(3) In the long-term, implementation of the Children of Nebraska Hearing Aid Act will allow those impacted by the act to be more competitive in the workforce and less dependent on assistance from the state and federal governments.

**Source:** Laws 2019, LB15, § 2.

**44-5003 Terms, defined.**

For purposes of the Children of Nebraska Hearing Aid Act:

(1) Health insurance plan means a plan which includes dependent coverage for an insured child and which is delivered, issued for delivery, renewed, extended, or modified in this state. Health insurance plan includes any such group or individual sickness and accident insurance policy, health maintenance organization contract, subscriber contract, employee medical, surgical, or hospital care benefit plan, or self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan also includes any policy, contract, or plan offered or administered by the state or its political subdivisions. Health insurance plan does not include a group health plan offered by a small employer as defined in section 44-5260 or a policy 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;

(2) Hearing aid means an ear level or bone conduction hearing device intended to aid or improve the sense of hearing for a person with a hearing impairment. The term includes all parts, replacement parts, parts for repair, tubing, and ear molds;

(3) Hearing impairment means a hearing impairment diagnosed by an otolaryngologist with an auditory assessment completed by a licensed audiologist; and

(4) Insured child means an individual who is covered by a health insurance plan and less than nineteen years of age.

**Source:** Laws 2019, LB15, § 3.

**44-5004 Health insurance plan; coverage required; items and services; exemption from act.**

(1) Beginning January 1, 2020, except as provided in subsection (4) of this section and notwithstanding section 44-3,131, any health insurance plan delivered, issued for delivery, renewed, extended, or modified in this state shall provide coverage pursuant to the Children of Nebraska Hearing Aid Act to each insured child. Such coverage shall be subject to subsection (2) of this section and shall include, for each ear affected by a hearing impairment, the following items and services:

(a) A hearing aid purchased from a licensed audiologist with the medical clearance from an otolaryngologist and costs related to dispensing such hearing aid;

(b) Evaluation for a hearing aid;

(c) Fitting of a hearing aid;

(d) Programming of a hearing aid;

(e) Probe microphone measurements for verification that hearing aid gain and output meet the prescribed targets;

(f) Hearing aid repairs;

(g) Follow-up adjustments, servicing, and maintenance of a hearing aid;

(h) Ear mold impressions;

(i) Ear molds; and

(j) Auditory rehabilitation and training.

(2)(a) Except as otherwise provided in this subsection, the items and services listed in subsection (1) of this section shall be covered on a continual basis to the extent that benefits paid for such items and services during the immediately preceding forty-eight-month period have not exceeded three thousand dollars.

(b) Coverage pursuant to the act shall allow for the replacement of a hearing aid and the associated services within three months of the dispensing date if the hearing aid gain and output fail to meet prescribed targets or the hearing aid is unable to be repaired or adjusted. If an insured child uses a hearing aid on September 1, 2019, and the hearing aid has been deemed unrepairable or obsolete by the manufacturer of the device, the insured child shall be eligible to use the benefits required by the act towards the acquisition of a new hearing aid, parts, and associated services.

(c) Coverage provided to an insured child pursuant to the act shall be subject to the same deductible, copayment, and coinsurance as similar covered items and services under the health insurance plan.

(3) A health insurance plan shall not refuse or deny coverage, refuse to renew or reissue coverage, or terminate coverage for an individual with a hearing impairment who is less than nineteen years of age based on such hearing impairment.

(4) A health insurance plan shall be exempt from the act for a plan year if, using a calculation method approved by the Department of Insurance, the cost of coverage would likely exceed one percent of all premiums collected under such plan for such plan year.

**Source:** Laws 2019, LB15, § 4.

#### **44-5005 Rules and regulations.**

The Department of Insurance may adopt and promulgate rules and regulations necessary to implement the Children of Nebraska Hearing Aid Act.

**Source:** Laws 2019, LB15, § 5.

## **ARTICLE 52**

### **SMALL EMPLOYER HEALTH INSURANCE**

Section  
44-5224. Purposes of act.

## Section

- 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, LB 1222, § 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.

**Cross References**

Unfair Insurance Trade Practices Act, see section 44-1521.

**ARTICLE 55**  
**SURPLUS LINES INSURANCE**

Section  
44-5501. Act, how cited.



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.
44-5506.01.	Nonadmitted insurer; certificate of authority; director; powers; provisions applicable.
44-5507.	Nonadmitted insurer; personal jurisdiction.
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.

#### **44-5501 Act, how cited.**

Sections 44-5501 to 44-5515 shall be known and may be cited as the Surplus Lines Insurance Act.

**Source:** Laws 1992, LB 1006, § 1; Laws 2007, LB117, § 21; Laws 2019, LB469, § 1.

#### **44-5502 Terms, defined.**

For purposes of the Surplus Lines Insurance Act, unless the context otherwise requires:

(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) Domestic surplus lines insurer means a nonadmitted insurer domiciled in this state that has a certificate of authority to operate as a domestic surplus lines insurer in the State of Nebraska issued as provided in section 44-5506.01;

(6)(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 (6)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (6)(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 (6)(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 (6)(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;

(7) 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);

(8)(a) Except as provided in subdivision (8)(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 (8)(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 (8)(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;

(9) Insurer has the same meaning as in section 44-103;

(10) 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

(11) 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; Laws 2019, LB469, § 2.

**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.

**44-5506.01 Nonadmitted insurer; certificate of authority; director; powers; provisions applicable.**

(1) The director may provide written authority in the form of a certificate of authority to operate as a domestic surplus lines insurer in the State of Nebraska to a nonadmitted insurer domiciled in this state if the director determines that such nonadmitted insurer:

- (a) Possesses policyholder surplus of at least fifteen million dollars;
- (b) Is an eligible surplus lines insurer in at least one state jurisdiction other than this state; and
- (c) Is acting pursuant to a resolution passed by its board of directors seeking to be a domestic surplus lines insurer in this state.

(2) All financial and solvency requirements imposed by Chapter 44 upon a domestic admitted insurer shall apply to a domestic surplus lines insurer unless domestic surplus lines insurers are otherwise specifically exempted.

(3) Policies issued by a domestic surplus lines insurer are not subject to the protections or other requirements of the Nebraska Property and Liability Insurance Guaranty Association Act or the Nebraska Life and Health Insurance Guaranty Association Act.

**Source:** Laws 2019, LB469, § 3.

**Cross References**

Nebraska Life and Health Insurance Guaranty Association Act, see section 44-2720.

Nebraska Property and Liability Insurance Guaranty Association Act, see section 44-2418.

**44-5507 Nonadmitted insurer; personal jurisdiction.**

Every nonadmitted insurer accepting business under the Surplus Lines Insurance Act shall be held to have sufficient contact with this state for the exercise of personal jurisdiction over such insurer (1) upon any cause of action

arising out of any such transaction or (2) in any proceeding before the director under the act.

**Source:** Laws 1913, c. 154, § 25, p. 410; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 589; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-145; Laws 1978, LB 836, § 5; Laws 1983, LB 447, § 57; R.S.1943, (1988), § 44-145; Laws 1992, LB 1006, § 7; Laws 2019, LB469, § 4.

**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 is a domestic surplus lines insurer or meets the following criteria:

- (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 accept 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 subsection (a) of this subsection, no nonadmitted alien insurer shall accept 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; Laws 2019, LB469, § 5.

**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.

**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.

**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



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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 68

### EMERGENCY MEDICAL SERVICES

#### (b) OUT-OF-NETWORK EMERGENCY MEDICAL CARE ACT

Section	
44-6834.	Act, how cited.
44-6835.	Definitions, where found.
44-6836.	Covered person, defined.
44-6837.	Emergency medical condition, defined.
44-6838.	Emergency services, defined.
44-6839.	Health benefits plan, defined.
44-6840.	Health care facility, defined.
44-6841.	Health care professional, defined.
44-6842.	Health care provider, defined.
44-6843.	Insurer, defined.
44-6844.	Medical assistance program, defined.
44-6845.	Medically necessary, defined.
44-6846.	TRICARE, defined.

## Section

- 44-6847. Emergency services; facility, bill; limitation.  
44-6848. Emergency services; health care provider, bill; limitation.  
44-6849. Emergency services; insurer; duties; payment; presumed reasonable; dispute resolution procedure.  
44-6850. Settlement, negotiation; mediation, when.

## (b) OUT-OF-NETWORK EMERGENCY MEDICAL CARE ACT

**44-6834 Act, how cited.**

Sections 44-6834 to 44-6850 shall be known and may be cited as the Out-of-Network Emergency Medical Care Act.

**Source:** Laws 2020, LB997, § 1.  
Operative date January 1, 2021.

**44-6835 Definitions, where found.**

For purposes of the Out-of-Network Emergency Medical Care Act, the definitions found in sections 44-6836 to 44-6846 apply.

**Source:** Laws 2020, LB997, § 2.  
Operative date January 1, 2021.

**44-6836 Covered person, defined.**

Covered person means a person on whose behalf an insurer is obligated to pay health care expense benefits or provide health care services.

**Source:** Laws 2020, LB997, § 3.  
Operative date January 1, 2021.

**44-6837 Emergency medical condition, defined.**

Emergency medical condition means a medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including, but not limited to, severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (1) placing the health of the person afflicted with such condition in serious jeopardy or, in the case of a behavioral condition, placing the health of such persons or others in serious jeopardy, (2) serious impairment to such person's bodily functions, (3) serious impairment of any bodily organ or part of such person, or (4) serious disfigurement of such person.

**Source:** Laws 2020, LB997, § 4.  
Operative date January 1, 2021.

**44-6838 Emergency services, defined.**

Emergency services means health care services medically necessary to screen and stabilize a covered person in connection with an emergency medical condition.

**Source:** Laws 2020, LB997, § 5.  
Operative date January 1, 2021.

**44-6839 Health benefits plan, defined.**

(1) Health benefits plan means a benefits plan which pays or provides hospital and medical expense benefits for covered services and is delivered or issued for delivery in this state by or through an insurer.

(2) Health benefits plan does not include the medical assistance program, medicare, medicare advantage, accident-only, credit, disability, or long-term care coverage, TRICARE supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance, and hospital confinement indemnity coverage.

**Source:** Laws 2020, LB997, § 6.  
Operative date January 1, 2021.

**44-6840 Health care facility, defined.**

Health care facility means a general acute hospital, satellite emergency department, or ambulatory surgical center licensed pursuant to the Health Care Facility Licensure Act.

**Source:** Laws 2020, LB997, § 7.  
Operative date January 1, 2021.

**Cross References**

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

**44-6841 Health care professional, defined.**

Health care professional means an individual who is credentialed pursuant to the Uniform Credentialing Act, who is acting within the scope of his or her credential, and who provides a covered service defined by the health benefits plan.

**Source:** Laws 2020, LB997, § 8.  
Operative date January 1, 2021.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**44-6842 Health care provider, defined.**

Health care provider means a health care professional or health care facility.

**Source:** Laws 2020, LB997, § 9.  
Operative date January 1, 2021.

**44-6843 Insurer, defined.**

Insurer means an entity that contracts to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefits plan, including (1) 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 (2) any self-funded employee benefit plan to the extent not preempted by federal law.

**Source:** Laws 2020, LB997, § 10.  
Operative date January 1, 2021.



**44-6844 Medical assistance program, defined.**

Medical assistance program means the medical assistance program established pursuant to the Medical Assistance Act.

**Source:** Laws 2020, LB997, § 11.  
Operative date January 1, 2021.

## Cross References

Medical Assistance Act, see section 68-901.

**44-6845 Medically necessary, defined.**

Medically necessary means a health care service that a health care provider, exercising his or her prudent clinical judgment, would provide to a covered person for the purpose of evaluating, diagnosing, or treating an illness, an injury, or a disease, or its symptoms, and that is in accordance with the generally accepted standards of medical practice; that is clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for the covered person's illness, injury, or disease; that is not primarily for the convenience of the covered person or the health care provider; and that is not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that covered person's illness, injury, or disease.

**Source:** Laws 2020, LB997, § 12.  
Operative date January 1, 2021.

**44-6846 TRICARE, defined.**

TRICARE means a health care program of the United States Department of Defense Military Health System.

**Source:** Laws 2020, LB997, § 13.  
Operative date January 1, 2021.

**44-6847 Emergency services; facility, bill; limitation.**

If a covered person receives emergency services at any health care facility, the facility shall not bill the covered person in excess of any deductible, copayment, or coinsurance amount applicable to in-network services pursuant to the covered person's health benefits plan.

**Source:** Laws 2020, LB997, § 14.  
Operative date January 1, 2021.

**44-6848 Emergency services; health care provider, bill; limitation.**

If a covered person receives emergency services at an in-network or out-of-network health care facility, the health care provider performing those services shall not bill the covered person in excess of any deductible, copayment, or coinsurance amount applicable to in-network services pursuant to the covered person's health benefits plan.

**Source:** Laws 2020, LB997, § 15.  
Operative date January 1, 2021.

**44-6849 Emergency services; insurer; duties; payment; presumed reasonable; dispute resolution procedure.**

(1) If a covered person receives emergency services at an in-network or out-of-network health care facility, the insurer shall ensure that the covered person incurs no greater out-of-pocket costs than the covered person would have incurred with an in-network health care provider for covered services.

(2) With respect to emergency services at an in-network or out-of-network health care facility, if the out-of-network health care provider bills an insurer directly, any reimbursement paid by the insurer shall be paid directly to the out-of-network health care provider. The insurer shall provide the out-of-network health care provider with a written remittance of payment that specifies the proposed reimbursement and the applicable deductible, copayment, or coinsurance amounts owed by the covered person.

(3) If emergency services provided at an in-network or out-of-network health care facility are performed, the out-of-network health care provider may bill the insurer for the services rendered. The insurer may pay the billed amount. A claim or a payment shall be presumed reasonable if it is based on the higher of (a) the contracted rate under any then-existing in-network contractual relationship between the insurer and the out-of-network health care provider for the same or similar services or (b) one hundred seventy-five percent of the payment rate for medicare services received from the federal Centers for Medicare and Medicaid Services for the same or similar services in the same geographic area. If the out-of-network health care provider deems the payment made by the insurer unreasonable, the out-of-network health care provider shall return payment to the insurer and utilize the dispute resolution procedure under section 44-6850.

**Source:** Laws 2020, LB997, § 16.  
Operative date January 1, 2021.

**44-6850 Settlement, negotiation; mediation, when.**

(1) If an insurer or an out-of-network health care provider provides notification that it considers a claim or payment to be not reasonable, the insurer and the health care provider shall have thirty days after the date of such notification to negotiate a settlement. If a settlement has not been reached after such thirty-day period, the insurer and the health care provider shall engage in mediation in accordance with the Uniform Mediation Act. The insurer may attempt to negotiate a final reimbursement amount with the out-of-network health care provider which differs from the amount paid by the insurer pursuant to this section.

(2) Following completion of the mediation process, the cost of mediation shall be split evenly and paid by the insurer and the health care provider.

(3) Mediation shall not be used when the insurer and the health care provider agree to a separate payment arrangement.

**Source:** Laws 2020, LB997, § 17.  
Operative date January 1, 2021.

**Cross References**

**Uniform Mediation Act**, see section 25-2930.

## 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.
- 44-7508.02. Policy forms; filing; director; powers and duties.
- 44-7512. Repealed. Laws 2019, LB469, § 10.
- 44-7513. Policy form filings.
- 44-7514. Policy form approval requirements applying to qualifying multistate commercial policyholder; exemption.

**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.

**44-7508.02 Policy forms; filing; director; powers and duties.**

(1) For policy forms to which this section applies as provided in section 44-7508.01, each insurer shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. For policy forms to which this section applies, no insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (10) or (11) of this section, section 44-7514, or rules and regulations adopted and promulgated pursuant to section 44-7515.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives such filing.

(3) Every policy form filing shall explain the intended use of such policy form. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed so that such listings can be provided upon request.

(4) The director shall acknowledge receipt of a policy form filing as soon as practical. A review of the filing by the director is not required to issue this acknowledgment, and acknowledgment shall not constitute an approval by the director.

(5) The director may review a policy form filing at any time after it has been made. The director shall review a policy form filing for insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs, within thirty days after the filing has been made. Following such review, the director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(6) If, within thirty days after its receipt, the director disapproves a filing that requires disapproval pursuant to subsection (5) of this section, then a written disapproval notice shall be sent to the insurer. The disapproval notice shall specify in what respects the filing fails to meet these requirements. Upon receipt of the notice of disapproval, the insurer shall cease use of the filing as



soon as practical but may use the form for policies that have already been issued or when pending coverage proposals are outstanding.

(7) If, within thirty days after its receipt, the director requests additional information to complete review of a policy form filing, the thirty-day review period allowed in subsection (6) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may disapprove the filing based on the insurer's failure to provide the requested information. Disapproval shall be by written notice sent to the insurer ordering discontinuance of the filing within thirty days after the date of notice.

(8) An insurer whose filing is disapproved pursuant to subsection (6) of this section may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(9) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(10)(a) Subject to the requirements of this subsection, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been filed with the director. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rule and regulation or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use. Any such informational filings specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(11) The director may by rule and regulation suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the Property and Casualty Insurance Rate and Form Act.

(12) If, at any time after the expiration of the review period provided by subsection (6) of this section or any extension thereof, the director finds that a policy form, attachment rule, or modification thereof does not meet or no

longer meets the requirements of subsection (5) of this section, the director shall hold a hearing in accordance with section 44-7532.

(13) Any insured aggrieved with respect to any policy form filing subject to this section may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(14) If, after a hearing held pursuant to subsection (12) or (13) of this section, the director finds that a filing does not meet the requirements of subsection (5) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

**Source:** Laws 2003, LB 216, § 21; Laws 2005, LB 119, § 27; Laws 2008, LB855, § 49; Laws 2019, LB469, § 6.

**44-7512 Repealed. Laws 2019, LB469, § 10.**

**44-7513 Policy form filings.**

(1) Each insurer to which this section applies as provided in section 44-7508.01 shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer to which this section applies shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (6) or (7) of this section, section 44-7514, or rules and regulations adopted and promulgated pursuant to section 44-7515.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every policy form filing shall explain the intended use of such policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed and approved by the director so that such listings can be provided upon request.

(4) If additional information is needed to complete review of a policy form filing, the director may require the filer to furnish the information and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(6)(a) Subject to the following requirements, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from the approval requirements contained in subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been approved by the director and receive written acknowledgment from prospective insureds for which it ultimately provides coverage. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed for approval within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to workers' compensation or excess workers' compensation insurance policy forms or to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rules and regulations or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use.

(7) The director may by rules and regulations suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the act.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(10) Within thirty days after receipt, the director shall approve filings that meet the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(14) If, at any time after approval, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 44-7532.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

**Source:** Laws 2000, LB 1119, § 13; Laws 2002, LB 1139, § 53; Laws 2003, LB 216, § 22; Laws 2006, LB 875, § 12; Laws 2019, LB469, § 7.

**44-7514 Policy form approval requirements applying to qualifying multistate commercial policyholder; exemption.**

(1) The policy form approval requirements set forth in section 44-7513 shall not apply to policies written for individual commercial risks of a qualifying multistate commercial policyholder. For the purposes of this section, a qualifying multistate commercial policyholder is an entity that meets the following qualifications:

(a) The policyholder is commercial in nature;

(b) If the policyholder is comprised of multiple corporations or other entities, there is common or majority ownership of each of the members by the same parent entity. Qualifying multistate commercial policyholder does not include franchise arrangements or other groups where individual members of the group are under different ownership; and

(c) The office with the largest number of the officers and senior management of the policyholder is located outside of Nebraska. If this criteria is not meaningful or is ambiguous for a policyholder, then the total premiums for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act that are attributable to another jurisdiction must exceed those premiums attributable to Nebraska.

(2) Policy forms for commercial risks exempted by this section may include language that conflicts with sections 44-357, 44-358, and 44-501.02. If a conflict results between a policy form and the requirements of such sections, such sections shall apply.

(3) Policy forms for commercial risks exempted by this section may include language that conflicts with sections 44-349, 44-350, 44-501, 44-514 to 44-518, 44-520 to 44-523, and 44-6408 and the provision of section 44-601 that prohibits policies with a term longer than five years. If a conflict results between a policy form and the requirements of any of these sections, the language in the policy form shall apply to the extent that it is inconsistent with such sections.

(4) Except as set forth in subsections (2) and (3) of this section, the policy forms exempted from policy form approval requirements shall not violate any law of this state.

**Source:** Laws 2000, LB 1119, § 14; Laws 2019, LB469, § 8.

**ARTICLE 76**

**MULTIPLE EMPLOYER WELFARE ARRANGEMENT ACT**

Section

44-7601. Act, how cited.

44-7603. Terms, defined.

44-7604. Health benefit plan; offer to self-employed individual or employer; restrictions.

44-7605. Certificate of registration; procedure.

44-7606. Association of participating employers or covered individuals; requirements.

44-7612. Coverage notification; summary plan description; claim or appeal denial notice; statement required.

44-7614. Disciplinary action.

44-7617. Act; applicability.

44-7618. Compliance with provisions of federal law, required; trust; surplus; amount required.

**44-7601 Act, how cited.**

Sections 44-7601 to 44-7618 shall be known and may be cited as the Multiple Employer Welfare Arrangement Act.

**Source:** Laws 2002, LB 1139, § 1; Laws 2020, LB1014, § 1.  
Effective date November 14, 2020.

**44-7603 Terms, defined.**

For purposes of the Multiple Employer Welfare Arrangement Act:

(1) Certificate of registration means a document issued by the director authorizing a multiple employer welfare arrangement to offer a health benefit plan that is not fully insured;

(2) Covered individual means (a) an employee who is covered by a health benefit plan provided through a multiple employer welfare arrangement in which the employer is participating or (b) a self-employed individual who is covered by a health benefit plan provided through a multiple employer welfare arrangement. Covered individual includes a dependent of an employee or self-employed individual as defined under the terms of the health benefit plan;

(3) Director means the Director of Insurance;

(4) Fully insured health benefit plan means a health benefit plan which provides for health benefits, all of which are guaranteed under a contract or policy of insurance issued by an insurance company licensed to transact the business of insurance in this state;

(5) Health benefit plan means an employee welfare benefit plan to the extent that it provides any hospital, surgical, or medical expense benefits to covered individuals directly or through insurance, reimbursement, or otherwise. Health benefit plan does not include (a) accident-only, disability income, hospital confinement indemnity, dental, or credit insurance, (b) coverage issued as a supplement to liability insurance, (c) medicare or insurance provided as a supplement to medicare, (d) insurance arising from workers' compensation provisions, (e) automobile medical payment insurance, (f) any other specific limited coverage, or (g) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy;

(6) Multiple employer welfare arrangement means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002, as such section existed on January 1, 2002, if the multiple employer welfare arrangement is sponsored by an association of employers that offers a health benefit plan that is not fully insured. Such association of employers may include self-employed individuals;

(7) Participating employer means an employer or self-employed individual that participates in a multiple employer welfare arrangement; and

(8) Self-employed individual means an individual who:

(a) Has an ownership interest in a trade or business in Nebraska, regardless of whether the trade or business is incorporated or unincorporated;

(b) Earns wages or self-employment income from the trade or business; and

(c) Works at least twenty hours per week or eighty hours per month providing personal services to the trade or business or earns annual income from the trade or business in an amount that is no less than the individual's and

any covered dependent's annual cost for health benefit plan coverage under the multiple employer welfare arrangement.

**Source:** Laws 2002, LB 1139, § 3; Laws 2020, LB1014, § 2.  
Effective date November 14, 2020.

**44-7604 Health benefit plan; offer to self-employed individual or employer; restrictions.**

No multiple employer welfare arrangement may offer to a self-employed individual or to an employer that is domiciled in this state or that has its principal headquarters or principal administrative offices in this state a health benefit plan unless the health benefit plan is a fully insured health benefit plan or unless the multiple employer welfare arrangement obtains and maintains a certificate of registration pursuant to the Multiple Employer Welfare Arrangement Act.

**Source:** Laws 2002, LB 1139, § 4; Laws 2020, LB1014, § 3.  
Effective date November 14, 2020.

**44-7605 Certificate of registration; procedure.**

(1) A multiple employer welfare arrangement seeking to offer a health benefit plan that is not fully insured shall apply for a certificate of registration in a form prescribed by the director. The application shall be completed and submitted to the director together with a one-thousand-dollar fee and the following:

(a) Copies of all articles, bylaws, agreements, and other documents or instruments describing the organizational structure of the applicant;

(b) Copies of all materials and documents describing the rights and obligations of participating employers and covered individuals with respect to the applicant;

(c) A copy of the trust agreement of the applicant;

(d) A copy of the unaudited financial statement required by section 44-7613;

(e) A statement showing in full detail the plan for offering a health benefit plan by the applicant;

(f) Copies of all contracts and other instruments proposed to be made, offered, or sold by the applicant to its participating employers, together with a copy of its summary plan description and the proposed advertising matter to be used in the solicitation of participating employers;

(g) A copy of the contract with the third-party administrator retained, if any, to administer the health benefit plan;

(h) A copy of the stop-loss insurance policy required by section 44-7609; and

(i) Any other reasonable information requested by the director.

(2) The director shall deny a certificate of registration if the applicant does not meet the requirements of the Multiple Employer Welfare Arrangement Act. Notice of denial shall be in writing and shall set forth the basis for the denial. If the applicant submits a written request for reconsideration within thirty days after the notice was sent by the director, the director shall conduct a hearing on the denial pursuant to the Administrative Procedure Act.

**Source:** Laws 2002, LB 1139, § 5; Laws 2020, LB1014, § 4.  
Effective date November 14, 2020.

## Cross References

Administrative Procedure Act, see section 84-920.

**44-7606 Association of participating employers or covered individuals; requirements.**

A multiple employer welfare arrangement may only be established and maintained by an association of participating employers or covered individuals who are self-employed individuals. The association shall not condition membership in the association, the amounts of dues or other payments for membership, or coverage under a health benefit plan on the basis of health-status-related factors with respect to the covered individuals offered coverage under the health benefit plan. The association shall:

- (1) Have been in existence and engaged in substantive activity for its members other than sponsorship of a health benefit plan for more than three years prior to application for a certificate of registration;
- (2) Be composed of two or more members, all of which are in the same trade or industry; and
- (3) Have, before application for a certificate of registration is made, applications for participation (a) from two or more members who are participating employers with an aggregate of two hundred or more covered individuals or (b) from at least two hundred covered individuals who are self-employed individuals.

**Source:** Laws 2002, LB 1139, § 6; Laws 2020, LB1014, § 5.  
Effective date November 14, 2020.

**44-7612 Coverage notification; summary plan description; claim or appeal denial notice; statement required.**

(1) A multiple employer welfare arrangement shall notify in writing each participating employer and each covered individual applying for coverage by the multiple employer welfare arrangement that a health benefit plan provided by the multiple employer welfare arrangement is not:

- (a) Insurance;
- (b) Subject to state laws and requirements that apply to health insurance offered by a licensed insurer; and
- (c) Covered by the Nebraska Life and Health Insurance Guaranty Association.

(2) The notice required by subsection (1) of this section shall, in ten-point or greater type, disclose that the multiple employer welfare arrangement is authorized under state law to assess participating employers for claims under the health benefit plan in addition to other remedies the multiple employer welfare arrangement may take if the multiple employer welfare arrangement is unable to pay claims.

(3) If the multiple employer welfare arrangement provides coverage to covered individuals who are self-employed individuals, the multiple employer welfare arrangement shall include a statement in the summary plan description and any claim or appeal denial notice that self-employed covered individuals may contact the Director of Insurance. Such statement shall include the mailing address and telephone number for the Department of Insurance.

**Source:** Laws 2002, LB 1139, § 12; Laws 2020, LB1014, § 6.  
Effective date November 14, 2020.



## Cross References

Nebraska Life and Health Insurance Guaranty Association, see section 44-2705.

**44-7614 Disciplinary action.**

(1) After notice and a hearing conducted pursuant to the Administrative Procedure Act, the director may suspend or revoke a certificate of registration or may impose an administrative fine not to exceed one thousand dollars per violation, or any combination of actions, if the director finds the multiple employer welfare arrangement:

(a) Fails to maintain the stop-loss insurance policy as required by section 44-7609;

(b) Engages in financial practices that make further transaction of business in this state hazardous or injurious to its participating employers, covered individuals, or the public;

(c) Within fifteen business days, fails to respond or request a reasonable amount of additional time to respond in which time a response is made, to an inquiry of the director;

(d) Fails for an unreasonable period to pay any final judgment rendered against it in this state on any contractual obligation;

(e) Conducts business fraudulently or has not met its contractual obligations in good faith;

(f) Made, published, disseminated, circulated, or placed before the public or caused, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the health benefit plan or with respect to any insurer in the conduct of his or her business which is untrue, deceptive, or misleading; or

(g) Violates any provision of the Multiple Employer Welfare Arrangement Act or section 44-106 or 44-114.

(2) Instead of or in addition to the penalties set forth in subsection (1) of this section, the director may issue a cease and desist order to a multiple employer welfare arrangement if such multiple employer welfare arrangement engages in any of the activities set forth in subsection (1) of this section.

**Source:** Laws 2002, LB 1139, § 14; Laws 2020, LB1014, § 7.  
Effective date November 14, 2020.

## Cross References

Administrative Procedure Act, see section 84-920.

**44-7617 Act; applicability.**

(1) Except as provided in subsection (2) of this section, the Multiple Employer Welfare Arrangement Act shall apply to multiple employer welfare arrangements offering health benefit plans on or after July 20, 2002.

(2) The Multiple Employer Welfare Arrangement Act shall apply to multiple employer welfare arrangements providing health care coverage to self-employed individuals on or after January 1, 2020.

**Source:** Laws 2002, LB 1139, § 17; Laws 2020, LB1014, § 9.

Effective date November 14, 2020.

**44-7618 Compliance with provisions of federal law, required; trust; surplus; amount required.**

(1) A multiple employer welfare arrangement that provides health care coverage to self-employed individuals shall comply with the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as such acts existed on January 1, 2020, and the following protections for covered individuals that would otherwise be required under the Employee Retirement Income Security Act of 1974:

(a) Fiduciary duties in section 404 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1104;

(b) Claims and appeal procedures in section 503 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1133;

(c) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 29 U.S.C. 1185a;

(d) The Newborns' and Mothers' Health Protection Act of 1996, 29 U.S.C. 1185; and

(e) The Genetic Information Nondiscrimination Act of 2008, 29 U.S.C. 1182.

(2) A multiple employer welfare arrangement that provides health care coverage to covered individuals who are self-employed individuals shall establish and maintain a surplus in the trust established pursuant to section 44-7607 in an amount equal to at least seven hundred fifty thousand dollars. The director may increase the amount required to be deposited in the trust based on the director's determination that such an increase is necessary after considering the level of aggregate and specific stop-loss insurance provided with respect to such multiple employer welfare arrangement and other factors related to solvency risk, such as the multiple employer welfare arrangement's projected levels of participation or claims, the nature of the multiple employer welfare arrangement's liabilities, and the types of assets available to assure that such liabilities are met.

**Source:** Laws 2020, LB1014, § 8.

Effective date November 14, 2020.

**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.

**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.

**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.

#### **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.

**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.

**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.

**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.

## 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.

**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

**HEALTH INSURANCE EXCHANGE NAVIGATOR REGISTRATION ACT § 44-8808**

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.

**§ 44-8901****INSURANCE**

## Section

- 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 assumptions 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, Nebraska Revised Statutes, Volume 2A.

#### **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

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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.
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- 44-9212. Financial responsibility; surety bond; director; powers.
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- 44-9215. Escrow account.
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- 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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 requirements 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.

**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.

**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.

**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.

**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.

**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.

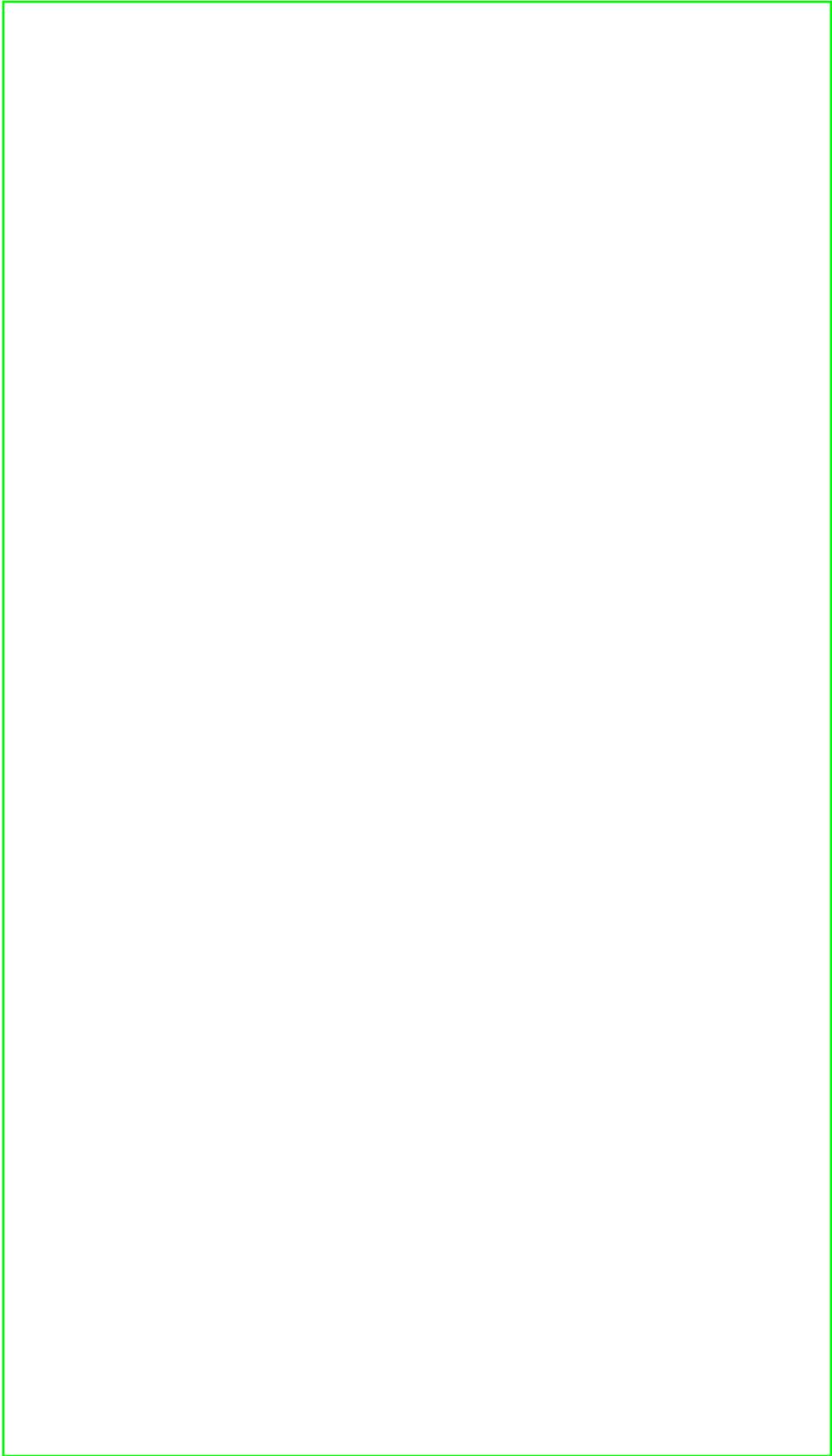
(4) No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value prior to settlement of a claim unless the loss is being handled by the public adjuster on a time-plus-expense basis.

**Source:** Laws 2018, LB743, § 18.

**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.



## 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. 45-601 to 45-623.
7. Residential Mortgage Licensing. 45-701 to 45-742.01.
8. Credit Services Organizations. 45-804, 45-806.
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.
12. Nebraska Construction Prompt Pay Act. 45-1201 to 45-1211.

#### 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.
- 45-191.02. Loan brokers; filings with department required; filing fees.
- 45-191.04. Loan brokerage agreement; requirements; right to cancel.
- 45-191.09. Director; summary cease and desist order; when; other enforcement measures; collection of fines and costs; hearing; procedure; appeal.
- 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.

**45-191.02 Loan brokers; filings with department required; filing fees.**

(1) Before advertising or making any oral or written representation or acting as a loan broker in this state a loan broker shall file with the department one copy of the disclosure statement and one copy of any loan brokerage agreement.

(2) The loan broker shall renew these filings no less than annually and shall also file any amendment to the disclosure statement within forty-five days after any material change in information required to be disclosed in the disclosure statement.

(3) The loan broker shall pay a one-hundred-fifty-dollar filing fee upon filing the initial disclosure statement and a one-hundred-dollar filing fee upon the filing of a renewal of the disclosure statement. The loan broker shall pay a fifty-dollar filing fee for each amendment filed. All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The information contained or filed under this section may be made available to the public under such rules and regulations as the department may prescribe.

**Source:** Laws 1993, LB 270, § 4; Laws 2001, LB 53, § 88; Laws 2003, LB 217, § 33; Laws 2020, LB909, § 23.  
Operative date July 25, 2020.

**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 busi-

ness 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.

**45-191.09 Director; summary cease and desist order; when; other enforcement measures; collection of fines and costs; hearing; procedure; appeal.**

(1) The director may summarily order a loan broker to cease and desist from acting as a loan broker or from the use of certain forms or practices relating to the loan broker’s activities if the order is in the public interest and the director finds:

(a) The disclosure statement on file is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) The loan broker has willfully violated or willfully failed to comply with any provision of sections 45-189 to 45-191.11;

(c) There has been a substantial failure to comply with any of the provisions of such sections;

(d) The continued use of certain forms or practices relating to the loan broker’s activity would constitute a misrepresentation, deceit, or fraud upon the consumer; or

(e) Any person identified in the required disclosure statement has been convicted of an offense described in subdivision (2)(i)(i) of section 45-191.01 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(i)(ii) or (2)(i)(iii) of section 45-191.01 and the involvement of such person in the loan broker’s business creates an unreasonable risk to prospective borrowers.

(2) If the director believes, whether or not based upon an investigation conducted under section 45-191.08, that any person or loan broker has engaged in or is about to engage in any act or practice constituting a violation of any provision of sections 45-189 to 45-191.11 or any rule, regulation, or order under such sections, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with such sections or any order under such sections.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fines and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state. The department shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs may be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the department. Failure of the person to pay a fine and costs shall constitute a separate violation of sections 45-189 to 45-191.11.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon receipt of a written request, the matter shall be set down for hearing to commence within thirty business days after the receipt 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 from the issuance of the order and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist 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.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1993, LB 270, § 11; Laws 2001, LB 53, § 90; Laws 2020, LB909, § 24.  
Operative date July 25, 2020.

**Cross References**

Administrative Procedure Act, see section 84-920.

**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.



Section	
45-336.	Installment contract; requirements.
45-340.	Contracts negotiated by mail; requirements.
45-345.	License; requirement; exception.
45-346.	License; application; contents; issuance; bond; fee; term; director; duties.
45-346.01.	Licensee; move of main office; notice to director; 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;

(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; and

(23) Branch office means any location, other than the main office location, at which the business of a licensee is to be conducted, including (a) any offices physically located in Nebraska, and (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents.

**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; Laws 2019, LB355, § 2.

#### 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.

#### **45-340 Contracts negotiated by mail; requirements.**

Installment contracts negotiated and entered into by mail without personal solicitation by salespersons or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time-sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of the Nebraska Installment Sales Act shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 45-336 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 45-336, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

**Source:** Laws 1965, c. 268, § 7, p. 762; Laws 2007, LB124, § 32; Laws 2019, LB355, § 3.

#### **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; contents; 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, except that on or after January 1, 2020, a person is no longer required to obtain a new license for each place of business and may maintain a branch office or offices upon compliance with the act.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include, but not be limited to, (a) the applicant's name and any trade name or doing business as designation which the applicant intends to use in this state, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, (g) if the applicant is an individual, his or her social security number, and (h) audited financial statements showing a minimum net worth of one hundred thousand dollars.

(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, if applicable, a one-hundred-dollar fee for each branch office listed in the application, 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 aban-

done 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; Laws 2019, LB355, § 4.

**45-346.01 Licensee; move of main office; notice to director; maintain minimum net worth; bond.**

(1) A licensee may move its main office from one place to another without obtaining a new license if the licensee gives notice thereof to the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to such move.

(2) A licensee shall notify the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to the occurrence of any of the following:

(a) The establishment of a new branch office. Notice of each such establishment shall be accompanied by a fee of one hundred dollars and any processing fee allowed under subsection (2) of section 45-354;

(b) The relocation or closing of an existing branch office; or

(c) A change of name, trade name, or doing business as designation.

(3) 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.

(4) 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; Laws 2019, LB355, § 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, plus one hundred dollars for each branch office, if applicable, 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 cancel 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; Laws 2019, LB355, § 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 prelicensure 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

- 45-601. Act, how cited; collection agency; license required; violation; penalty; foreign agency; communication authorized.
- 45-602. Terms, defined.
- 45-603. Collection Agency Licensing Board; created; members; term; expenses; employees; Secretary of State; duties.
- 45-605. Board; duties; application for license; filing; issuance; denial; appeal.
- 45-605.01. Nationwide Mortgage Licensing System and Registry; licensure and registration; requirements.
- 45-606. License; application; fees; financial statement; form.
- 45-609. License; form; display.
- 45-610. Licensee; employees; solicitor’s certificates; form.
- 45-611. Licenses; certificates; expiration; renewal; application; time.
- 45-620. License; certificates; fees.
- 45-621. Repealed. Laws 2020, LB910, § 49.
- 45-623. Collection of public debts; contracts authorized; requirements.

**45-601 Act, how cited; collection agency; license required; violation; penalty; foreign agency; communication authorized.**

Sections 45-601 to 45-622 shall be known and may be cited as the Collection Agency Act.

No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business as defined in the act until he, she, or it has secured a license as provided in the act. Any person, firm, corporation, or association conducting or operating such a collection agency or doing such a collection agency business without a license shall be guilty of a Class III misdemeanor for each day that such unlawful business is conducted. Any officer or agent of a firm, corporation, or association who personally participates in any violation of the act shall be guilty of a Class III misdemeanor.

Nothing contained in this section shall be construed to require a regular employee of a collection agency duly licensed as such in this state to procure a collection agency license.

Nothing in the act shall be construed to prohibit a person, firm, corporation, or association regulated as a collection agency in another state and residing in another state from communicating with a debtor in this state.

**Source:** Laws 1963, c. 500, § 1, p. 1592; Laws 1977, LB 39, § 299; R.S.1943, (1981), § 81-8,158; Laws 1984, LB 471, § 1; Laws 1993, LB 261, § 1; Laws 2020, LB909, § 25.  
Operative date November 14, 2020.

Cross References

Exemptions from Credit Services Organization Act, see section 45-803.

**45-602 Terms, defined.**

For purposes of the Collection Agency Act:

- (1) Board means the Collection Agency Licensing Board;

(2) Collection agency means and includes:

(a) All persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation, or association, claims of any kind owed or due or asserted to be owed or due such solicited person, firm, corporation, or association, and all persons, firms, corporations, and associations directly or indirectly engaged in asserting, enforcing, or prosecuting such claims;

(b) Any person, firm, corporation, or association which, in attempting to collect or in collecting his, her, or its own accounts or claims, uses a fictitious name or any name other than his, her, or its own name which would indicate to the debtor that a third person is collecting or attempting to collect such account or claim; and

(c) Any person, firm, corporation, or association which attempts to or does give away or sell to any person, firm, corporation, or association, other than one licensed under the act, any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate, directly or indirectly, that the claim or account is being asserted or collected by any other person, firm, corporation, or association other than the creditor or owner of the claim or demand;

(3) Collection agency does not mean or include (a) regular employees of a single creditor, (b) banks, (c) trust companies, (d) savings and loan associations, (e) building and loan associations, (f) abstract companies doing an escrow business, (g) duly licensed real estate brokers and agents when the claims or accounts being handled by such broker or agent are related to or are in connection with such brokers' or agents' regular real estate business, (h) express and telegraph companies subject to public regulation and supervision, (i) attorneys at law handling claims and collections in their own names and not operating a collection agency under the management of a layperson, (j) any person, firm, corporation, or association handling claims, accounts, or collections under an order or orders of any court, or (k) a person, firm, corporation, or association which, for valuable consideration, purchases accounts, claims, or demands of another and then, in such purchaser's own name, proceeds to assert or collect such accounts, claims, or demands; and

(4) 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.

**Source:** Laws 1963, c. 500, § 2, p. 1593; R.S.1943, (1981), § 81-8,159; Laws 1984, LB 471, § 2; Laws 1993, LB 261, § 2; Laws 2020, LB909, § 26.

Operative date November 14, 2020.

**45-603 Collection Agency Licensing Board; created; members; term; expenses; employees; Secretary of State; duties.**

(1) There is hereby created the Collection Agency Licensing Board which shall consist of the Secretary of State, who shall be chairperson of the board, and four members appointed by the Governor. Three of the members appointed by the Governor shall be licensees actively engaged in the collection business in

this state, one of whom shall reside in each of the state's three congressional districts. The remaining member shall be appointed at large as a representative of the public. Such person shall not be a licensee actively engaged in the collection business in this state.

(2) The term of office of each appointed member shall be for four years, except that of the members of the first board appointed under this section, two shall be appointed for a term of two years. Before a member's term expires, the Governor shall appoint a successor to take office on the expiration of the member's term. A member shall continue to serve after the expiration of his or her term until a successor is appointed and qualified. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(3) The members of the board shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(4) The board may employ such persons as may be necessary to carry out the Collection Agency Act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the act, except that all remuneration, expenses, salaries, and expenditures provided for in the act shall be paid out of the Secretary of State Cash Fund.

(5) The Secretary of State shall keep a record of all the proceedings, transactions, communications, and official acts performed pursuant to the act and perform such other duties as may be necessary to carry out the intent and purpose of the act.

**Source:** Laws 1963, c. 500, § 8, p. 1595; R.S.1943, (1981), § 81-8,165; Laws 1984, LB 471, § 4; Laws 1989, LB 3, § 1; Laws 1993, LB 261, § 3; Laws 2020, LB381, § 37; Laws 2020, LB910, § 13.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB381, section 37, with LB910, section 13, to reflect all amendments.

**Note:** Changes made by LB381 became operative January 1, 2021. Changes made by LB910 became operative July 1, 2021.

#### **45-605 Board; duties; application for license; filing; issuance; denial; appeal.**

The board shall be responsible for the administration of the Collection Agency Act. All applications for licenses provided for in the act shall be made to the board. If the applicant is an individual, the application shall include the applicant's social security number. The board shall investigate the qualifications of each applicant for a license. Based on the results of the investigation, the board may either issue a license to the applicant upon the payment of the license fee and any processing fee allowed under section 45-605.01 and the furnishing of the bond provided for in section 45-608 or refuse to issue such license. The action of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1963, c. 500, § 9, p. 1595; R.S.1943, (1981), § 81-8,166; Laws 1984, LB 471, § 5; Laws 1988, LB 352, § 75; Laws 1993, LB 261, § 5; Laws 1997, LB 752, § 117; Laws 2020, LB909, § 27.

Operative date November 14, 2020.

#### **Cross References**

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

#### **45-605.01 Nationwide Mortgage Licensing System and Registry; licensure and registration; requirements.**

(1) Effective October 1, 2020, or within one year after the Nationwide Mortgage Licensing System and Registry is capable of processing licenses issued under the Collection Agency Act, whichever is later, the board, upon its discretion, may require 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 board may participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the board 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) Any information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license provided for in sections 45-606 and 45-620 and any processing fee allowed under this section through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(d) Amending or surrendering a license or any other such activities as the board deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Collection Agency Act, the board may 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 board may allow such system to collect licensing fees on behalf of the board 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 board shall regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

(4) The board shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the board.

(5) The board 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 board shall make available upon written request a copy of the contract between the board and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) Upon written request, the board shall provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

**Source:** Laws 2020, LB909, § 33.

Operative date November 14, 2020.

**45-606 License; application; fees; financial statement; form.**

(1) Any person, firm, corporation, or association desiring to engage in this state in the collection business under the Collection Agency Act shall make written and sworn application for such license to the board upon a form to be

prescribed by the board, which application shall be accompanied by an investigation fee of not to exceed two hundred fifty dollars and any processing fee allowed under section 45-605.01. The amount of the investigation fee shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration and enforcement of the act. Such application shall be accompanied by a duly verified financial statement of the applicant in form prescribed by the board. The Secretary of State shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

(2) The board may require applicants to utilize the Nationwide Mortgage Licensing System and Registry or an entity designated by the Nationwide Mortgage Licensing System and Registry for the processing of applications and fees.

**Source:** Laws 1963, c. 500, § 10, p. 1596; Laws 1974, LB 639, § 2; R.S.1943, (1981), § 81-8,167; Laws 1984, LB 471, § 6; Laws 1989, LB 206, § 1; Laws 1993, LB 261, § 6; Laws 2020, LB909, § 28; Laws 2020, LB910, § 14.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB909, section 28, with LB910, section 14, to reflect all amendments.

**Note:** Changes made by LB909 became operative November 14, 2020. Changes made by LB910 became operative July 1, 2021.

#### **45-609 License; form; display.**

The license provided for in section 45-607 shall be in such form as prescribed by the board. If the licensee maintains a branch office, the licensee shall not do a collection agency business in such branch office until the licensee has secured a branch office certificate for such branch office. A licensee, so long as his, her, or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch offices operated by such licensee upon payment of the fee as set forth in section 45-620 and any processing fee allowed under section 45-605.01. A licensee shall display his, her, or its license in a conspicuous place in his, her, or its principal place of business, and if the licensee conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

**Source:** Laws 1963, c. 500, § 13, p. 1598; R.S.1943, (1981), § 81-8,170; Laws 1984, LB 471, § 9; Laws 1993, LB 261, § 9; Laws 2020, LB909, § 29.  
Operative date November 14, 2020.

#### **45-610 Licensee; employees; solicitor's certificates; form.**

The board shall, upon written application by a licensee and the payment of the fee as set forth in section 45-620 and any processing fee allowed under section 45-605.01, issue solicitor's certificates to employees of the licensee who solicit or collect accounts, which certificates shall be in such form as determined by the board. Such certificates shall entitle the solicitor named in the certificate to solicit and handle, for the licensee named in the certificate, collection agency business, accounts, and claims. Upon the termination of the employment of the solicitor by the licensee, such certificate shall become null



and void and shall be returned by such solicitor to the licensee for cancellation by the board.

**Source:** Laws 1963, c. 500, § 14, p. 1598; R.S.1943, (1981), § 81-8,171; Laws 1984, LB 471, § 10; Laws 1993, LB 261, § 10; Laws 2020, LB909, § 30.  
Operative date November 14, 2020.

**45-611 Licenses; certificates; expiration; renewal; application; time.**

(1) All licenses and certificates issued under the Collection Agency Act shall expire on December 31 following the date of issuance unless renewed as provided in this section prior to such date. All branch office certificates and solicitor's certificates shall continue in full force and effect only so long as the license under which they are issued is in full force and effect.

(2) Each licensee shall, if he or she desires to have his or her license renewed, make application to the board for such renewal on or before December 31 of each year and shall, with such application, furnish the bond required by section 45-608 or furnish evidence of the continuation in effect of the prior bond so furnished and pay the renewal fee provided for in section 45-620 and any processing fee allowed under section 45-605.01.

(3) If an application for renewal of a license is denied, the applicant may appeal from such refusal the same as from the refusal to issue an original license.

(4) Upon renewal of a license, the board shall issue to the licensee a new license or a certificate of renewal of the previous license in such form as the board determines. Upon the renewal of a license, the licensee may, if the licensee maintains a branch office, secure a renewal of his, her, or its branch office certificate upon payment of the renewal fee provided for in section 45-620 and any processing fee allowed under section 45-605.01. Such licensee may also secure renewals of his, her, or its solicitor's certificates upon payment of the renewal fee provided for in section 45-620 and any processing fee allowed under section 45-605.01.

**Source:** Laws 1963, c. 500, § 15, p. 1598; R.S.1943, (1981), § 81-8,172; Laws 1984, LB 471, § 11; Laws 1993, LB 261, § 11; Laws 2020, LB909, § 31.  
Operative date November 14, 2020.

**45-620 License; certificates; fees.**

No license, renewal of license, branch office certificate, or solicitor's certificate, as provided for in the Collection Agency Act, shall be issued by the board until any processing fee allowed under section 45-605.01 has been paid and the following fees have been paid to the Secretary of State: For a license, not to exceed two hundred dollars; for renewal of a license, not to exceed one hundred dollars; for a branch office certificate, not to exceed fifty dollars; for renewal of a branch office certificate, not to exceed thirty-five dollars; for a solicitor's certificate and for renewal of a solicitor's certificate, not to exceed ten dollars. The amount of the fees to be paid to the Secretary of State shall be fixed by the board and shall not exceed the amounts actually necessary to sustain the administration and enforcement of the act. The Secretary of State

shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 1963, c. 500, § 24, p. 1603; Laws 1974, LB 639, § 3; R.S.1943, (1981), § 81-8,181; Laws 1984, LB 471, § 20; Laws 1989, LB 206, § 2; Laws 1993, LB 261, § 18; Laws 2020, LB909, § 32; Laws 2020, LB910, § 15.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB909, section 32, with LB910, section 15, to reflect all amendments.

**Note:** Changes made by LB909 became operative November 14, 2020. Changes made by LB910 became operative July 1, 2021.

**45-621 Repealed. Laws 2020, LB910, § 49.**

Operative date July 1, 2021.

**45-623 Collection of public debts; contracts authorized; requirements.**

(1) Any state agency, county, city, village, or other political subdivision may contract to retain a collection agency licensed pursuant to the Collection Agency Act, within or without this state, for the purpose of collecting public debts owed by any person to such state agency, county, city, village, or other political subdivision.

(2) No debt owed pursuant to subsection (1) of this section may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor by first-class mail, postage prepaid, at the last-known address of the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid and (b) at least thirty days have elapsed from the time the notice was sent, except that in the case of an order for support being enforced by a county attorney, authorized attorney, or prosecuting attorney pursuant to Chapter 42 or 43, this notice requirement shall not apply and Title IV-D of the federal Social Security Act, as amended, shall be complied with.

(3) A collection agency which is assigned a debt under this section shall have only those remedies and powers which would be available to it as an assignee of a private creditor. This subsection shall not be construed to in any way limit the remedies and powers available to an authorized attorney as defined in section 43-512.

(4) For purposes of this section, debt shall include all delinquent fees or payments except delinquent property taxes on real estate. In the case of debt arising as a result of an order or judgment of a court in a criminal or traffic matter, a collection fee may be added to the debt. The collection fee shall be twenty-five dollars or four and one-half percent of the debt, whichever is greater. The collection fee shall be paid by the person who owes the debt directly to the person or agency providing the collection service.

**Source:** Laws 1993, LB 161, § 1; Laws 2020, LB909, § 34.

Operative date November 14, 2020.

**Cross References**

Collection Agency Act, see section 45-601.

**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.
45-705.	License or registration required; application; fees; background investigation; registered agent.
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; temporary authority to act as mortgage loan originator; conditions.
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.
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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 Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, 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; Laws 2019, LB258, § 15.

**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.

**45-705 License or registration required; application; fees; background investigation; registered agent.**

(1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed as a mortgage banker, is registered with the department as provided in section 45-704, is licensed under the Nebraska Installment Loan Act, or is otherwise exempt from the act pursuant to section 45-703.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on a form prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation which the applicant intends to use in this state, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, (g) if the applicant is an individual, his or her social security number, and (h) fingerprints of any principal officer, director, partner, member, or sole proprietor for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment. A post office box number may be provided in addition to the street address.

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (2) of section 45-748.

(5) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nationwide Mortgage Licensing System and Registry. If the applicant is a partnership, association, corporation, or other form of business organization, the director shall require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. Fingerprints of any principal officer, director, partner, member, or sole proprietor shall be submitted to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (2) of section 45-748, receipt of criminal history record information by a private person or entity is prohibited.

(6) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (5) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency.

(7) A license as a mortgage banker granted under the Residential Mortgage Licensing Act shall not be assignable.

(8) An application is deemed filed when accepted as substantially complete by the director.

**Source:** Laws 1989, LB 272, § 8; Laws 1995, LB 163, § 3; Laws 1997, LB 752, § 118; Laws 2003, LB 218, § 3; Laws 2005, LB 533, § 52; Laws 2007, LB124, § 42; Laws 2008, LB380, § 1; Laws 2009, LB328, § 7; Laws 2010, LB892, § 7; Laws 2019, LB355, § 7.

**Cross References**

Nebraska Installment Loan Act, see section 45-1001.

**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; temporary authority to act as mortgage loan originator; conditions.**

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703 or, on or after November 24, 2019, unless having temporary authority under subsections (4) or (5) of this section, 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.

(4) Beginning November 24, 2019, upon becoming employed by a mortgage banker licensed in this state, an individual who is a registered mortgage loan originator shall be deemed to have temporary authority to act as a mortgage loan originator in this state for one hundred twenty days after submitting a mortgage loan originator application unless:

- (a) The individual withdraws his or her mortgage loan originator application;
- (b) The director denies the mortgage loan originator application;
- (c) The director grants the individual a mortgage loan originator license;
- (d) The application remains incomplete more than one hundred twenty days after the application was submitted;
- (e) The individual has had an application for a mortgage loan originator license denied, revoked, or suspended at any time in any governmental jurisdiction;
- (f) The individual has been subject to, or served with, a cease and desist order in any governmental jurisdiction;
- (g) The individual has been convicted of a misdemeanor or felony that precludes licensure under the act; or
- (h) The individual was not a registered mortgage loan originator for at least one year prior to application under the act.

(5) Beginning November 24, 2019, an individual who is a licensed mortgage loan originator in another state employed by a mortgage banker licensed in this state shall be deemed to have temporary authority to act as a mortgage loan originator in this state for one hundred twenty days after submitting a mortgage loan originator application unless:

- (a) The individual withdraws his or her mortgage loan originator application;
- (b) The director denies the mortgage loan originator application;
- (c) The director grants the individual a mortgage loan originator license;
- (d) The application remains incomplete more than one hundred twenty days after the application was submitted;
- (e) The individual has had an application for a mortgage loan originator license denied, revoked, or suspended at any time in any governmental jurisdiction;

(f) The individual has been subject to, or served with, a cease and desist order in any governmental jurisdiction;

(g) The individual has been convicted of a misdemeanor or felony that precludes licensure under the act; or

(h) The individual has not been a licensed mortgage loan originator in another state for at least thirty days prior to application under the act.

(6) Beginning November 24, 2019, any person employing an individual who is deemed to have temporary authority to act as a mortgage loan originator in this state, and any individual who is deemed to have temporary authority to act as a mortgage loan originator in this state, shall be subject to the requirements of the act to the same extent as if that individual was a licensed mortgage loan originator under the act.

**Source:** Laws 2009, LB328, § 12; Laws 2013, LB290, § 2; Laws 2019, LB355, § 8.

**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 preclicensing 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 suspen-



sion 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) Except as provided in subsection (5) of this section, 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) A mortgage loan originator who holds an inactive mortgage loan originator license that has been renewed one time may not renew such inactive license for a second annual licensing period unless (a) the inactive license was reactivated after such inactive license was renewed or (b) the mortgage loan originator demonstrates good cause to the director to allow renewal of the inactive license for an additional annual licensing period.

(6) 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; Laws 2019, LB355, § 9.

#### **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 five 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; Laws 2019, LB355, § 10.

**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 Mortgage 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 regulatory 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 com-



mitted 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.

45-806. Registration statement; contents; requirements; fee.

**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.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

**45-806 Registration statement; contents; requirements; fee.**

(1) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this state. The registration statement shall contain:

(a) The name and address of the credit services organization; and

(b) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

(2) The registration statement shall also contain either:

(a) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(b) A notarized statement that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(3) The credit services organization shall update the registration statement within ninety days after the date on which a change in the information required in the statement occurs.

(4) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(5) The Secretary of State may charge each credit services organization that files a registration statement with the Secretary of State a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The Secretary of State shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund. The Secretary of State shall not require a credit services organization to provide information other than that provided in the registration statement.

**Source:** Laws 1991, LB 292, § 6; Laws 2020, LB910, § 16.  
Operative date July 1, 2021.

**ARTICLE 9**

**DELAYED DEPOSIT SERVICES LICENSING ACT**

Section	
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- Section
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- 45-917. Licensee; written notice; contents; fees, charges, and penalties; posting required.
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- 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; Laws 2020, LB909, § 35.  
Operative date November 14, 2020.

**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, 2020, 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;

(10) 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

(11) 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; Laws 2020, LB909, § 36.

Operative date November 14, 2020.

**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.

**45-905 Application for license; form; contents; criminal history record information check.**

(1) An applicant for a license shall submit an application, under oath, to the director on forms prescribed by the director. The forms shall contain such information as the director may prescribe, including, but not limited to:

(a) The applicant's financial condition;

(b) The qualifications and business history of the applicant and of its officers, directors, shareholders, partners, or members;

(c) Whether the applicant or any of its officers, directors, shareholders, partners, or members have ever been convicted of any (i) misdemeanor involving any aspect of a delayed deposit services business or any business of a similar nature or (ii) felony;

(d) Whether the applicant or any of its officers, directors, shareholders, partners, or members have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a delayed deposit services business or any business of a similar nature;

(e) A description of the applicant's proposed method of doing business; and

(f) If the applicant is an individual, the applicant's social security number.

(2) The director shall cause a criminal history record information check to be conducted of the applicant, its officers, directors, shareholders, partners, or members and, on or after January 1, 2021, as provided in subsection (1) of section 45-905.01. The direct cost of the criminal history record information check shall be paid by the applicant.

**Source:** Laws 1994, LB 967, § 5; Laws 1997, LB 752, § 119; Laws 2020, LB909, § 37.

Operative date November 14, 2020.

**45-905.01 Nationwide Mortgage Licensing System and Registry; licensees; requirements; director; powers and duties.**

(1) On and after January 1, 2021, licensees under the Delayed Deposit Services Licensing Act are required 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 director may establish requirements as necessary by adopting and promulgating rules and regulations or by order. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Fingerprints of any principal officer, director, partner, member, or sole proprietor submitted to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the director;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(d) 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 Delayed Deposit Services Licensing Act, the department may contract 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 applicants, licensees, or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and may allow such system to collect a processing fee for the services of the system directly from each applicant or licensee.

(3) The director shall regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered by the director into the Nationwide Mortgage Licensing System and Registry.

(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 such policy and the contract between the department and the system.

(6) Upon written request the department shall provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

(7) The director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (5) of this section.

**Source:** Laws 2020, LB909, § 39.

Operative date November 14, 2020.

**45-906 Application; fees; bond.**

The application required by section 45-905 shall be accompanied by:

(1) A nonrefundable application fee of five hundred dollars and any processing fee allowed under subsection (2) of section 45-905.01; and

(2) A surety bond in the base amount of fifty thousand dollars which, on or after January 1, 2021, shall be increased by fifty thousand dollars for each branch office established or to be established in Nebraska. The surety bond shall be executed by the licensee and a surety company authorized to do business in Nebraska and approved by the director conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed and the prompt payment of any judgment recovered against the licensee. The bond or a substitute bond shall remain in effect during all periods of licensing or the licensee shall immediately cease doing business and its license shall be surrendered to or canceled by the department. A surety may cancel a bond only upon thirty days' written notice to the director.

(3) The director may at any time require the filing of a new or supplemental bond in the form as provided in subdivision (2) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of the licensee or the applicant for a license, or violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee or applicant for a license. The new or supplemental bond shall not exceed one hundred thousand dollars over the amount of the bond required by subdivision (2) of this section.

**Source:** Laws 1994, LB 967, § 6; Laws 2001, LB 53, § 104; Laws 2006, LB 876, § 37; Laws 2020, LB909, § 38.

Operative date November 14, 2020.

**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.

**45-910 License; posting; renewal; fees.**

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee’s place of business.

(2)(a) Except as provided in subdivision (2)(b) of this section, 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.

(b) All licenses issued on or after November 14, 2020, and before January 1, 2021, shall remain in effect until December 31, 2021, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911. All licenses issued on or after January 1, 2021, shall remain in effect until the next succeeding December 31, 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 and any processing fee allowed under subsection (2) of section 45-905.01 for the main office location and five hundred dollars and any processing fee allowed under subsection (2) of section 45-905.01 for each branch office location and (b) an application for renewal in writing through the Nationwide Mortgage Licensing System and Registry 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; Laws 2020, LB909, § 40.  
Operative date November 14, 2020.

**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 and any processing fee allowed under subsection (2) of section 45-905.01. 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; Laws 2020, LB909, § 41.  
Operative date November 14, 2020.

**45-912 Licensee; duty to inform director; when.**

A licensee shall be required to notify the director in writing through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of any material development, including, but not limited to:

- (1) Bankruptcy or corporate reorganization;
- (2) Business reorganization;
- (3) Institution of license revocation procedures by any other state or jurisdiction;
- (4) The filing of a criminal indictment or complaint against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;
- (5) A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents; or
- (6) The termination of employment or association with the licensee of any of the licensee's officers, directors, shareholders, partners, members, employees, or agents for violations or suspected violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee.

**Source:** Laws 1994, LB 967, § 12; Laws 2006, LB 876, § 40; Laws 2020, LB909, § 42.  
Operative date November 14, 2020.

**45-915 Licensee; principal place of business; change of location; branch offices; approval required; fees.**

(1) Except as provided in subsection (2) of this section, a licensee, on or before December 31, 2020, may offer a delayed deposit services business only at an office designated as its principal place of business in the application. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(2) On or before December 31, 2020, a licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(3) On or after January 1, 2021, a licensee shall designate an office in Nebraska as its principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(4) On or after January 1, 2021, a licensee may operate branch offices in Nebraska. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(5) A licensee may offer a delayed deposit services business only at an office designated as its principal place of business and any branch office established pursuant to this section.

(6) A fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-905.01 shall be submitted with each request made pursuant to this section.

**Source:** Laws 1994, LB 967, § 15; Laws 2006, LB 876, § 41; Laws 2020, LB909, § 43.

Operative date November 14, 2020.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**§ 45-1001**

**INTEREST, LOANS, AND DEBT**

Section

- 45-1017. Licensees; business, records, and accounts; inspection; expenses; fines; lien.
- 45-1018. Licensees; reports.
- 45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.
- 45-1033. License; administrative fine; disciplinary actions; failure to renew.
- 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.

**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.

**45-1017 Licensees; business, records, and accounts; inspection; expenses; fines; lien.**

(1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and conduct examinations of licensees as often as determined by the director. The expenses incurred by the department in examining licensees and in administering the act shall be charged to the licensee as set forth in sections 8-605 and 8-606.

(2) 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 constitutes a separate violation.

(3) 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 Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued 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.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) 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 constitutes a separate violation of the act.

**Source:** Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-130; Laws 1997, LB 137, § 21; Laws 1997, LB 555, § 13; Laws 1999, LB 396, § 27; R.S.Supp.,2000, § 45-130; Laws

2001, LB 53, § 45; Laws 2004, LB 999, § 38; Laws 2007, LB124, § 56; Laws 2020, LB909, § 44.  
Operative date July 25, 2020.

**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.

**45-1033 License; administrative fine; disciplinary actions; failure to renew.**

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any 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 knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement 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 pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision 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, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued;

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, 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, financial institution business, or installment loan business or (ii) any felony under state or federal law; or

(j) 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.

(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 and the rules and regulations adopted and promulgated by the department under the act.

(3)(a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, 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 45-1007, 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 borrower.

(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 any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

**Source:** Laws 2001, LB 53, § 61; Laws 2003, LB 218, § 16; Laws 2005, LB 533, § 63; Laws 2007, LB124, § 57; Laws 2009, LB328, § 49; Laws 2020, LB909, § 45.  
Operative date July 25, 2020.

**Cross References**

Administrative Procedure Act, see section 84-920.

**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.

**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.

**IRRIGATION AND REGULATION OF WATER**

**CHAPTER 46**  
**IRRIGATION AND REGULATION OF WATER**

Article.

1. Irrigation Districts.
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**ARTICLE 1**  
**IRRIGATION DISTRICTS**

(a) ORGANIZATION OF DISTRICTS

Section

- 46-101. Irrigation District Act, how cited; irrigation districts; organization; grant of authority.
- 46-102. Terms, defined.
- 46-109. District; divisions; directors; number; election; terms.
- 46-110. District; organization and officers; election; notice; voters; eligibility.
- 46-111. District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.
- 46-115. Subsequent elections; manner; notice.
- 46-116. Election officers; powers and duties; hours of election.
- 46-117. Elections; return and canvass of vote.

(d) CONSTRUCTION BY DISTRICT

- 46-151. Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.

§ 46-101

**IRRIGATION AND REGULATION OF WATER**

Section

(j) CHANGE OF BOUNDARIES

46-179. Exclusion of lands; objection made; action of board; election required; notice; procedure.

(k) DISCONTINUANCE OF DISTRICT

46-185. Discontinuance of district; petition; special election; notice; procedure.

(r) CONTRACTS FOR WATER SUPPLY

46-1,145. Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.

(u) MERGER OF DISTRICTS

46-1,160. Merger of districts; election; ballots; canvass; board of directors.

(a) ORGANIZATION OF DISTRICTS

**46-101 Irrigation District Act, how cited; irrigation districts; organization; grant of authority.**

(1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act, and when so organized, each district shall have the power conferred by law upon such irrigation district.

**Source:** Laws 1895, c. 70, § 1, p. 269; Laws 1903, c. 121, § 1, p. 615; Laws 1905, c. 165, § 1, p. 648; Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 187; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 361; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-101; Laws 2015, LB561, § 1.

**46-102 Terms, defined.**

(1) For purposes of the Irrigation District Act:

(a) Elector means any resident of the State of Nebraska, owning not less than fifteen acres of land, or who is an entryman of government land, within any irrigation district or proposed irrigation district, or any resident of the State of Nebraska holding a leasehold estate in not less than forty acres of state land within such irrigation district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one

division of the irrigation district, the elector shall be considered an elector in the division of the district in which the majority of his or her land is situated.

(3) In the case of land owned or leased by joint tenants, each joint tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(4) In the case of land owned or leased by tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(6) In the case of land owned or leased under a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(7) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(8) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(9) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

(10) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine

the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

**Source:** Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 362; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-102; Laws 2015, LB561, § 2.

**46-109 District; divisions; directors; number; election; terms.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division.

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine, whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-109; Laws 1972, LB 1509, § 1; Laws 2015, LB561, § 3.

**46-110 District; organization and officers; election; notice; voters; eligibility.**

(1) After dividing the proposed irrigation district into divisions, the county board shall give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act. Such notice shall describe the boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot shall contain the words Irrigation district . . . . . Yes, or Irrigation district . . . . . No, or words equivalent thereto; and also the names

of persons to be voted for to fill various elective offices prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

**Source:** Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 193; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-110; Laws 2015, LB561, § 4.

**46-111 District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.**

(1) Irrigation district elections shall be conducted in accordance with the Irrigation District Act.

(2) The county board shall meet on the second Monday next succeeding any irrigation district election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district . . . . . Yes, the county board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated and shall also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election for the formation of the district, the county board shall establish one or more election precincts in the proposed

district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.

**Source:** Laws 1895, c. 70, § 3, p. 272; R.S.1913, § 3459; Laws 1919, c. 111, § 1, p. 273; C.S.1922, § 2859; C.S.1929, § 46-103; R.S.1943, § 46-111; Laws 1951, c. 148, § 1, p. 595; Laws 2015, LB561, § 5.

**Cross References**

**Election laws**, generally, see Chapter 32.

**Voting by mail**, absentee voters, see sections 32-938 to 32-951.

**Voting by mail**, special election procedures, see sections 32-952 to 32-959.

**46-115 Subsequent elections; manner; notice.**

(1) Fifteen days before any election which is not held by mail under the Irrigation District Act subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents from each precinct, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board of election or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be.

**Source:** Laws 1895, c. 70, § 5, p. 274; R.S.1913, § 3461; C.S.1922, § 2861; C.S.1929, § 46-105; R.S.1943, § 46-115; Laws 1951, c. 148, § 2, p. 596; Laws 2015, LB561, § 6.

**Cross References**

**Voting by mail**, absentee voters, see sections 32-938 to 32-951.

**Voting by mail**, special election procedures, see sections 32-952 to 32-959.



**46-116 Election officers; powers and duties; hours of election.**

(1) One of the judges shall be chairperson of the board of election and may (a) administer all oaths required in the progress of an election under the Irrigation District Act and (b) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of the precinct may administer and certify such oath.

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, except that in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

**Source:** Laws 1895, c. 70, § 6, p. 274; Laws 1913, c. 22, § 1, p. 94; R.S.1913, § 3462; C.S.1922, § 2862; C.S.1929, § 46-106; R.S. 1943, § 46-116; Laws 2015, LB561, § 7.

**46-117 Elections; return and canvass of vote.**

(1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

**Source:** Laws 1895, c. 70, § 7, p. 275; R.S.1913, § 3463; C.S.1922, § 2863; C.S.1929, § 46-107; R.S.1943, § 46-117; Laws 2015, LB561, § 8.

**(d) CONSTRUCTION BY DISTRICT****46-151 Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.**

The cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation district at their par value, after having first advertised the same for sale as

provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act are covered by contract between the district and the United States. In lieu of the issuance of additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act.

**Source:** Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 131; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 179; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-151; Laws 2015, LB561, § 9.

#### (j) CHANGE OF BOUNDARIES

##### **46-179 Exclusion of lands; objection made; action of board; election required; notice; procedure.**

If the assent of the holders of the bonds is filed and entered of record as provided in section 46-178, and if there are objections presented by any person showing cause which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1895, c. 70, § 52, p. 299; R.S.1913, § 3509; C.S.1922, § 2909; C.S.1929, § 46-154; R.S.1943, § 46-179; Laws 2015, LB561, § 10.

#### Cross References

For election laws, see Chapter 32.

#### (k) DISCONTINUANCE OF DISTRICT

##### **46-185 Discontinuance of district; petition; special election; notice; procedure.**

Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the

board of directors to call a special election for the purpose of submitting to the electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the same, and cause a notice of such election to be published in some newspaper of general circulation in each of the counties in which the district is located, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, and shall also cause a written or printed notice of such election to be posted in some conspicuous place in each of the voting precincts. The board of directors shall provide ballots to be used at such election on which shall be written or printed the words For discontinuance . . . . Yes, and For discontinuance . . . . No. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1897, c. 91, §§ 1, 2, p. 372; Laws 1903, c. 123, § 1, p. 625; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S. 1943, § 46-185; Laws 2015, LB561, § 11.

(r) CONTRACTS FOR WATER SUPPLY

**46-1,145 Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.**

If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors of the district at any general election or at a special election called therefor for the approval or disapproval of the contract. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. If a majority of the electors that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

**Source:** Laws 1915, c. 205, § 3, p. 442; C.S.1922, § 2946; C.S.1929, § 46-203; R.S.1943, § 46-1,145; Laws 2015, LB561, § 12.

(u) MERGER OF DISTRICTS

**46-1,160 Merger of districts; election; ballots; canvass; board of directors.**

The board of directors of the irrigation districts to be merged shall provide ballots to be used at such election. The return of the election, together with the ballots cast thereat, shall be certified by the boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and

declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.

**Source:** Laws 1972, LB 1509, § 8; Laws 2015, LB561, § 13.

**ARTICLE 2  
GENERAL PROVISIONS**

(e) ADJUDICATION OF WATER RIGHTS

Section

46-229.04. Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(f) APPLICATION FOR WATER

46-236. Application for water power; lease from state required; fee; renewal; cancellation; grounds.

46-240.01. Supplemental additional appropriations; agricultural appropriators; application.

46-241. Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(g) IRRIGATION WORKS; CONSTRUCTION, OPERATION, AND REGULATION

46-251. Irrigation works; use of state lands and highways; grant; right-of-way; condemnation.

(l) INTRABASIN TRANSFERS

46-290. Appropriation; application to transfer or change; contents; approval.

46-294. Applications; approval; requirements; conditions; burden of proof.

(m) UNDERGROUND WATER STORAGE

46-297. Permit to appropriate water; modification to include underground water storage; procedure.

(n) INSTREAM APPROPRIATIONS

46-2,109. Streams with need for instream flows; identification; study.

(p) WATER POLICY TASK FORCE

46-2,131. Repealed. Laws 2011, LB 2, § 8.

46-2,132. Repealed. Laws 2011, LB 2, § 8.

46-2,133. Repealed. Laws 2011, LB 2, § 8.

46-2,134. Repealed. Laws 2011, LB 2, § 8.

46-2,135. Repealed. Laws 2011, LB 2, § 8.

46-2,136. Repealed. Laws 2011, LB 2, § 8.

46-2,137. Repealed. Laws 2011, LB 2, § 8.

46-2,138. Repealed. Laws 2011, LB 2, § 8.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environment and Energy; duties.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140. Repealed. Laws 2015, LB 9, § 1.

46-2,141. Repealed. Laws 2015, LB 9, § 1.

(e) ADJUDICATION OF WATER RIGHTS

**46-229.04 Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.**

(1) At a hearing held pursuant to section 46-229.03, the verified field investigation report of an employee of the department, or such other report or

information that is relied upon by the department to reach the preliminary determination of nonuse, shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if:

(a) Such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined by the department to be fully appropriated pursuant to section 46-714, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation; or

(b) The land subject to the appropriation is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal, state, or natural resources district program, or such land was previously under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on such land subsequent to when that land was last under such program.

(3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

(a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;

(b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or

(c) The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

(a) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(b) Use of the water was unnecessary because of climatic conditions;

(c) Circumstances were such that a prudent person, following the principles of good husbandry, would not have been expected to use the water;

(d) The works, diversions, or other facilities essential to use the water were destroyed by a cause not within the control of the owner of the appropriation and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

(e) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or

(f) Legal proceedings prevented or restricted use of the water.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, a reclamation district, a public power and irrigation district, a mutual irrigation company or canal company, or the United States Bureau of Reclamation and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination, or five years after an order of cancellation issued by the department following the filing of a voluntary relinquishment of the water appropriation that has been signed by the landowner and the appropriator of record, to assign the right to use that portion of the appropriation to other land within the district or the area served by the company, to file an application for a transfer in accordance with section 46-290, or to transfer the right in accordance with sections 46-2,127 to 46-2,129. The department shall issue its order of cancellation within sixty days after receipt of the voluntary relinquishment unless the relinquishment is conditioned by the landowner upon an action of a governmental agency. If the relinquishment contains such a provision, the department shall issue its order of cancellation within sixty days after receipt of notification that such action has been completed. The department shall be notified of any such assignment within thirty days after such assignment. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 46-229.06.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The

right to reinitiate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinitiated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

**Source:** Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(5), p. 521; Laws 1973, LB 186, § 6; Laws 1983, LB 380, § 3; Laws 1987, LB 140, § 4; Laws 1987, LB 356, § 1; Laws 1995, LB 350, § 3; Laws 2000, LB 900, § 100; Laws 2004, LB 962, § 9; Laws 2006, LB 1226, § 9; Laws 2007, LB701, § 15; Laws 2019, LB48, § 1.

#### (f) APPLICATION FOR WATER

**46-236 Application for water power; lease from state required; fee; renewal; cancellation; grounds.**

An application for appropriation of water for water power shall meet the requirements of section 46-234 and subsection (1) of section 46-235 to be approved. Within six months after the approval of an application for water power and before placing water to any beneficial use, the applicant shall enter into a contract with the State of Nebraska, through the department, for leasing the use of all water so appropriated. Such lease shall be upon forms prepared by the department, and the time of such lease shall not run for a greater period than fifty years; and for the use of water for power purposes the applicant shall pay into the state treasury on or before January 1 each year fifteen dollars for each one hundred horsepower for all water so appropriated. Upon application of the lessee or its assigns, the department shall renew the lease so as to continue it and the water appropriation in full force and effect for an additional period of fifty years.

Upon the failure of the applicant to comply with any of the provisions of such lease and the failure to pay any of such fees, the department shall notify the lessee that the required fees have not been paid to the department or that the lessee is not otherwise in compliance with the provisions of the lease. If the lessee has not come into compliance with all provisions of the lease or has not paid to the department all required fees within fifteen calendar days after the date of such notice, the department shall issue an order denying the applicant the right to divert or otherwise use the water appropriation for power production. The department shall rescind the order denying use of the water appropriation at such time as the lessee has come into compliance with all provisions of the lease and has paid all required fees to the department. If after forty-five calendar days from the date of issuance of the order the lessee is not in compliance with all provisions of the lease or required fees have not been paid

to the department, such lease and water appropriation shall be canceled by the department.

**Source:** Laws 1921, c. 291, § 1, p. 942; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-236; Laws 1972, LB 1306, § 1; Laws 1987, LB 140, § 7; Laws 2000, LB 900, § 111; Laws 2011, LB27, § 1.

**46-240.01 Supplemental additional appropriations; agricultural appropriators; application.**

All appropriators of water for agricultural purposes of less than the statutory limit of direct flow from the public waters of this state within the drainage basin of the stream from which such waters originate shall be entitled to such additional appropriation or appropriations from the direct flow of such stream, within the statutory limits provided by law, as may be necessary and required for the production of crops in the practice of good husbandry. Applications for such supplemental additional appropriations from the direct flow, upon the approval or granting thereof, shall have priority within the drainage basin as of the date such applications are filed in the office of the department.

**Source:** Laws 1953, c. 160, § 1, p. 503; Laws 2000, LB 900, § 114; Laws 2011, LB31, § 1.

**46-241 Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.**

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.



(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required downstream in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

**Source:** Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309, § 1; Laws 2000, LB 900, § 115; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74; Laws 2014, LB1098, § 12.

**Cross References**

Safety of Dams and Reservoirs Act, see section 46-1601.

(g) IRRIGATION WORKS; CONSTRUCTION,  
OPERATION, AND REGULATION

**46-251 Irrigation works; use of state lands and highways; grant; right-of-way; condemnation.**

All persons desirous of constructing any of the works provided for in sections 46-244 to 46-250 shall have the right to occupy state lands and obtain right-of-way over and across any highway in this state for such purpose without compensation, except public school lands. All bridges or crossings over such ditches, laterals, and canals 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 on a highway under the jurisdiction of such board or governing body. All such persons may obtain a right-of-way not to exceed sixteen feet in width, for a like purpose along, parallel to, and upon one side of any highway by condemnation proceedings where the same does not interfere with the proper drainage of such highway. In such cases the abutting landowner and the county may grant such right-of-way, or in case of their refusal notice shall be served upon them and proceedings had as in other cases. Not more than one such ditch or lateral shall be permitted along the side of the same highway.

**Source:** Laws 1919, c. 190, tit. VII, art. V, div. 3, § 7, p. 848; C.S.1922, § 8457; C.S.1929, § 46-607; R.S.1943, § 46-251; Laws 1961, c. 227, § 2, p. 672; Laws 2017, LB339, § 175.

**Cross References**

**Bridge over drainage or irrigation ditch**, construction, maintenance, and payment of costs, see section 39-805.

(I) INTRABASIN TRANSFERS

**46-290 Appropriation; application to transfer or change; contents; approval.**

(1)(a) Except as provided in this section and sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the use of such appropriation to a location other than the location specified in the permit, (ii) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, or (iii) to change the purpose for which the water is to be used under a natural-flow, storage, or storage-use appropriation to a purpose not at that time permitted under the appropriation shall apply for approval of such transfer or change to the Department of Natural Resources.

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the location of use, type of appropriation, or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a mortgage, trust deed, or other equivalent consensual security interest against the tract or tracts of land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be

transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the Director of Natural Resources to be consistent with section 46-294, may be approved subject to the following:

(a) A natural-flow appropriation for direct out-of-stream use may be changed to a natural-flow appropriation for aboveground reservoir storage or for intentional underground water storage;

(b) A natural-flow appropriation for intentional underground water storage may be changed to a natural-flow appropriation for direct out-of-stream use or for aboveground reservoir storage;

(c) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 to 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115;

(d) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that the resulting appropriation for induced ground water recharge would be consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;

(e) An appropriation for the manufacturing of hydropower at a facility located on a natural stream channel may be permanently changed in full to an instream basin-management appropriation to be held jointly by the Game and Parks Commission and any natural resources district or combination of natural resources districts. The beneficial use of such change is to maintain the streamflow for fish, wildlife, and recreation that was available from the manufacturing of hydropower prior to the change. Such changed appropriation may also be utilized by the owners of the appropriation to assist in the implementation of an approved integrated management plan or plans developed pursuant to sections 46-714 to 46-718 for each natural resources district within the river basin. Any such change under this section shall be subject to review under sections 46-229 to 46-229.06 to ensure that the beneficial uses of the change of use are still being achieved; and

(f) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water

storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (f) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.

Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall be subject to the statutes, rules, and regulations that apply to the type of appropriation to which the change has been made.

(4) The Legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued pursuant to section 46-2,115 are specific to the location identified in the appropriation. Neither type of appropriation shall be transferred to a different location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved, such transfers and changes may be approved if the purpose is (a) to maintain or augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.

For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is maintained or augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days after the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to the same location of use, type of appropriation, and purpose of use as prior to such approval.

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such

information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(f) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

(8) Any appropriation for manufacturing of hydropower changed under subdivision (3)(e) of this section shall maintain the priority date and preference category of the original manufacturing appropriation and shall be subject to condemnation and subordination pursuant to sections 70-668 and 70-669. Any person holding a subordination agreement that was established prior to such change of appropriation shall be entitled to enter into a new subordination agreement for terms consistent with the original subordination agreement at no additional cost. Any person having obtained a condemnation award that was established prior to such change of appropriation shall be entitled to the same benefits created by such award, and any obligations created by such award shall become the obligations of the new owner of the appropriation changed under this section.

**Source:** Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131; Laws 2004, LB 962, § 16; Laws 2006, LB 1226, § 10; Laws 2009, LB477, § 1; Laws 2016, LB1038, § 12.

**46-294 Applications; approval; requirements; conditions; burden of proof.**

(1) Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:

(a) The application is complete and all other information requested pursuant to section 46-293 has been provided;

(b) The proposed use of water after the transfer or change will be a beneficial use of water;

(c)(i) Any requested transfer in the location of use is within the same river basin as defined in section 46-288 or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred;

(d) Except as otherwise provided in subsection (4) of this section, the proposed transfer or change, alone or when combined with any new or increased use of any other source of water at the original location or within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291;

(e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, except that this subdivision does not apply to (i) a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change or (ii) a transfer or change in the purpose of use of a surface water irrigation appropriation as provided for in subsection (3), (5), or (6) of section 46-290 if the transfer or change in purpose will not diminish the supply of water available or otherwise adversely affect any other water appropriator, adversely affect Nebraska's ability to meet its obligations under a multistate agreement, or result in administration of the prior appropriation system by the Department of Natural Resources, which would not have otherwise occurred;

(f) The appropriation, prior to the transfer or change, is not subject to termination or cancellation pursuant to sections 46-229 to 46-229.04;

(g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company or is dependent upon any such district's or company's facilities for water delivery, such district or company has approved the transfer or change;

(h) If the proposed transfer or change is of a storage-use appropriation and if the owner of that appropriation is different from the owner of the associated storage appropriation, the owner of the storage appropriation has approved the transfer or change;

(i) If the proposed transfer or change is to be permanent, either (i) the purpose for which the water is to be used before the transfer or change is in the same preference category established by section 46-204 as the purpose for which the water is to be used after the transfer or change or (ii) the purpose for which the water is to be used before the transfer or change and the purpose for which the water is to be used after the transfer or change are both purposes for which no preferences are established by section 46-204;

(j) If the proposed transfer or change is to be temporary, it will be for a duration of no less than one year and, except as provided in section 46-294.02, no more than thirty years;

(k) The transfer or change will not be inconsistent with any applicable state or federal law and will not jeopardize the state's compliance with any applicable interstate water compact or decree or cause difficulty in fulfilling the provisions of any other formal state contract or agreement; and

(l) The proposed transfer or change is in the public interest. The director's considerations relative to the public interest shall include, but not be limited to, (i) the economic, social, and environmental impacts of the proposed transfer or change and (ii) whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change. The Department of Natural Resources shall adopt and promulgate rules and regulations to govern the director's determination of whether a proposed transfer or change is in the public interest.

(2) The applicant has the burden of proving that the proposed transfer or change will comply with subdivisions (1)(a) through (l) of this section, except that (a) the burden is on a riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order

to prevent approval of an application and (b) if both the current use and the proposed use after a transfer are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change, there is a rebuttable presumption that the transfer will be consistent with subdivision (1)(d) of this section.

(3) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest, to ensure consistency with any of the other criteria in subsection (1) of this section, or to provide the department with information needed to properly and efficiently administer the appropriation while the transfer or change remains in effect. If necessary to prevent diminution of supply for any other appropriator, the conditions imposed by the director shall require that historic return flows be maintained or replaced in quantity, timing, and location. After approval of any such transfer or change, the appropriation shall be subject to all water use restrictions and requirements in effect at any new location of use and, if applicable, at any new diversion location. An appropriation for which a transfer or change has been approved shall retain the same priority date as that of the original appropriation. If an approved transfer or change is temporary, the location of use, purpose of use, or type of appropriation shall revert to the location of use, purpose of use, or type of appropriation prior to the transfer or change.

(4) In approving an application for a transfer, the director may also authorize the overlying of water appropriations on the same lands, except that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director may also authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location. An increase in the number of acres to be irrigated shall be approved only if (a) such an increase will not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined to be fully appropriated pursuant to section 46-714 and (i) the number of acres authorized under the appropriation when originally approved has not been increased previously, (ii) the increase in the number of acres irrigated will not exceed five percent of the number of acres being irrigated under the permit before the proposed transfer or a total of ten acres, whichever acreage is less, and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

**Source:** Laws 1983, LB 21, § 6; Laws 1984, LB 818, § 2; Laws 1993, LB 789, § 4; Laws 2000, LB 900, § 135; Laws 2004, LB 962, § 20; Laws 2012, LB526, § 1.

(m) UNDERGROUND WATER STORAGE

**46-297 Permit to appropriate water; modification to include underground water storage; procedure.**

Any person who has an approved, unperfected appropriation pursuant to Chapter 46, article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

**Source:** Laws 1983, LB 198, § 11; Laws 1997, LB 752, § 120; Laws 2013, LB102, § 1.

(n) INSTREAM APPROPRIATIONS

**46-2,109 Streams with need for instream flows; identification; study.**

Each natural resources district and the Game and Parks Commission shall conduct studies to identify specific stream segments which the district or commission considers to have a critical need for instream flows. Such studies shall quantify the instream flow needs in the identified stream segments. Any district or the Game and Parks Commission may request the assistance of the Conservation and Survey Division of the University of Nebraska, the Game and Parks Commission, the Department of Environment and Energy, the Department of Natural Resources, or any other state agency in order to comply with this section.

**Source:** Laws 1984, LB 1106, § 25; Laws 1985, LB 102, § 14; Laws 1993, LB 3, § 6; Laws 2000, LB 900, § 141; Laws 2019, LB302, § 20.

(p) WATER POLICY TASK FORCE

**46-2,131 Repealed. Laws 2011, LB 2, § 8.**

**46-2,132 Repealed. Laws 2011, LB 2, § 8.**

**46-2,133 Repealed. Laws 2011, LB 2, § 8.**

**46-2,134 Repealed. Laws 2011, LB 2, § 8.**

**46-2,135 Repealed. Laws 2011, LB 2, § 8.**

**46-2,136 Repealed. Laws 2011, LB 2, § 8.**

**46-2,137 Repealed. Laws 2011, LB 2, § 8.**

**46-2,138 Repealed. Laws 2011, LB 2, § 8.**

(q) STORM WATER MANAGEMENT PLAN PROGRAM

**46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environment and Energy; duties.**

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of



Environment and Energy, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 77 Federal Register 18652-18669, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 77 Federal Register 18652-18669, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

**Source:** Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1; Laws 2014, LB683, § 1; Laws 2019, LB302, § 21.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

**46-2,140 Repealed. Laws 2015, LB 9, § 1.**

**46-2,141 Repealed. Laws 2015, LB 9, § 1.****ARTICLE 5****RECLAMATION DISTRICTS**

## Section

46-538. Directors; compensation; expenses.

46-544. Special assessments; levy; limitation.

**46-538 Directors; compensation; expenses.**

Each director shall receive from the board a per diem of not to exceed seventy dollars per day for each day that such director attends a board meeting or is engaged in matters concerning the district, but no director shall receive more than two thousand eight hundred dollars in any one year. Each director shall also be entitled to expenses in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1947, c. 173, § 10(3), p. 534; Laws 1981, LB 204, § 76; Laws 2001, LB 409, § 1; Laws 2020, LB381, § 38.  
Operative date January 1, 2021.

**Cross References**

**Additional expenses**, board may reimburse, Local Government Miscellaneous Expenditure Act, see section 13-2201.

**46-544 Special assessments; levy; limitation.**

(1) If the board of a reclamation district determines in any year that there are certain lands within the district, not included within Classes B, C, and D, which receive special direct benefits from recharging of the ground water reservoirs by water originating from district works, the board shall in such year fix an amount to be levied upon the taxable value of the taxable property as a special assessment which in the opinion of the board will compensate the district for the special direct benefits accruing to such property by reason of recharged ground water reservoirs under such land by water originating from the district works. Such amount shall in no case exceed, together with all other amounts levied made under Class A on such land, the sum of fourteen cents on each one hundred dollars of the taxable value of the land. Such owner of lands specially assessed for special direct benefits shall have notice, hearing, and the right of appeal and shall be governed by section 46-554.

(2) The authority provided in this section may not be used if the district has obtained approval to levy fees or assessments pursuant to section 46-2,101.

**Source:** Laws 1947, c. 173, § 15(2), p. 540; Laws 1969, c. 145, § 38, p. 696; Laws 1979, LB 187, § 173; Laws 1983, LB 198, § 21; Laws 1992, LB 1063, § 40; Laws 1992, Second Spec. Sess., LB 1, § 40; Laws 2015, LB361, § 57.

**Cross References**

**Budget Act, Nebraska**, section included, see section 13-501.

**ARTICLE 6**  
**GROUND WATER**

(a) REGISTRATION OF WATER WELLS

Section

46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

46-606. Water wells; registration fees; disposition.

(b) GROUND WATER CONSERVATION DISTRICTS

46-633. Repealed. Laws 2011, LB 2, § 8.

46-634.01. Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

46-637. Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01. Permit; application to amend; procedures; limitation.

(i) REPUBLICAN RIVER BASIN

46-692. Repealed. Laws 2011, LB 1, § 1.

(a) REGISTRATION OF WATER WELLS

**46-602 Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.**

(1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The licensed water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide licensed water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the online services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the licensed water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the licensed pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) water wells constructed as part of

remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environment and Energy.

(6) The Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The licensed water well contractor or licensed pump installation contractor responsible therefor shall notify the department within sixty days on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the licensed water well contractor or licensed pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department within sixty days on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Practice Act. The licensed water well contractor who decommissions the water well, the licensed pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a licensed water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells described in subdivision (1)(b) of section 46-601.01 which were constructed prior to May 2, 2007, shall be registered within one hundred eighty days after such date.

**Source:** Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 310, § 42; Laws 1986, LB 886, § 1; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2; Laws 2006, LB 1226, § 15; Laws 2007, LB296, § 202; Laws 2007, LB463, § 1140; Laws 2007, LB701, § 18; Laws 2019, LB302, § 22.

#### Cross References

**Industrial Ground Water Regulatory Act**, see section 46-690.

**Old wells not in use**, duty to fill or decommission, see sections 54-311 and 54-315.

**Water Well Standards and Contractors' Practice Act**, see section 46-1201.

#### **46-606 Water wells; registration fees; disposition.**

(1) The Director of Natural Resources shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each water well registered under section 46-602 except as provided in subsections (2) through (5) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first ten such water wells registered under section 46-602, and for each group of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224.

(3) For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the director shall collect in advance a fee of forty dollars for each such series and the fee required by subsection (3) of section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection

(3) of section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by subsection (3) of section 46-1224 shall be collected.

(5)(a) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first two such wells registered under section 46-602.

(b) Any additional water wells which are part of a series registered under this subsection shall not be subject to a new well registration fee.

(6) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. From the registration fees required by subsections (1) through (5) of this section, the State Treasurer shall credit to the Department of Natural Resources Cash Fund the amount determined by the Department of Natural Resources to be necessary to pay for the costs of processing notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of the registration fees required by subsections (1) through (5) of this section to the Water Well Decommissioning Fund. The State Treasurer shall credit the fees required by subsection (3) of section 46-1224 to the Water Well Standards and Contractors' Licensing Fund.

**Source:** Laws 1957, c. 200, § 6, p. 703; Laws 1986, LB 886, § 4; Laws 1986, LB 310, § 43; Laws 1993, LB 131, § 6; Laws 1994, LB 981, § 7; Laws 1999, LB 92, § 3; Laws 2000, LB 900, § 172; Laws 2001, LB 667, § 6; Laws 2002, LB 458, § 3; Laws 2003, LB 31, § 1; Laws 2003, LB 242, § 6; Laws 2019, LB302, § 23.

**Cross References**

Industrial Ground Water Regulatory Act, see section 46-690.

(b) GROUND WATER CONSERVATION DISTRICTS

**46-633 Repealed. Laws 2011, LB 2, § 8.**

**46-634.01 Repealed. Laws 2011, LB 2, § 8.**

(c) PUMPING FOR IRRIGATION PURPOSES

**46-637 Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.**

The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in

section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

**Source:** Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8; Laws 2013, LB102, § 2.

**Cross References**

Exemption for reusing ground water from reuse pit, see section 46-287.  
For additional definitions, see section 46-706.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

**46-683.01 Permit; application to amend; procedures; limitation.**

If during construction or operation a permitholder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set forth in the permit, the permitholder may file an application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit, except for an amendment to increase the maximum daily volumetric flow rate or annual volume to levels authorized under a permit issued by the Department of Environment and Energy pursuant to section 81-1504 and subsection (9) of section 81-1505.

**Source:** Laws 1986, LB 309, § 3; Laws 2012, LB498, § 1; Laws 2019, LB302, § 24.

(i) REPUBLICAN RIVER BASIN

**46-692 Repealed. Laws 2011, LB 1, § 1.**

**ARTICLE 7**

**NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT**

Section

- 46-701. Act, how cited.
- 46-704. Management area; legislative findings.
- 46-705. Act; how construed.
- 46-706. Terms, defined.
- 46-707. Natural resources district; powers; enumerated; fee.
- 46-708. Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.
- 46-711. Ground water management plan; director; review; duties.
- 46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.
- 46-721. Contamination; reports required.



## Section

- 46-722. Contamination; Department of Environment and Energy; conduct study; when; report.
- 46-723. Contamination; point source; Director of Environment and Energy; duties.
- 46-724. Contamination; not point source; Director of Environment and Energy; duties; hearing; notice.
- 46-725. Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order.
- 46-726. Management area; contamination; action plan; preparation by district; when; hearing; notice; publication.
- 46-728. Management area; contamination; adoption or amendment of action plan; considerations; procedures.
- 46-729. Management area; contamination; action plan; district publish order adopted.
- 46-730. Management area; action plan; district; duties.
- 46-731. Management area; action plan; director specify controls; when; powers and duties; hearing.
- 46-732. Action plan; controls; duration; amendment of plan.
- 46-733. Removal of designation management area or requirement of action plan; modification of boundaries; when.
- 46-743. Public hearing; requirements.
- 46-749. Administration of act; compliance with other laws.
- 46-750. Appeal; procedure.
- 46-752. Repealed. Laws 2020, LB1009, § 8.
- 46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.
- 46-755. Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.
- 46-756. Ground water augmentation project; public hearing; notice.

**46-701 Act, how cited.**

Sections 46-701 to 46-756 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

**Source:** Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19; Laws 2009, LB477, § 3; Laws 2014, LB1098, § 13.

**46-704 Management area; legislative findings.**

The Legislature also finds that:

- (1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;
- (2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;
- (3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;
- (4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environment and Energy should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environment and Energy should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

**Source:** Laws 1986, LB 894, § 1; Laws 1993, LB 3, § 14; R.S.1943, (1993), § 46-674.02; Laws 1996, LB 108, § 9; R.S.1943, (1998), § 46-656.03; Laws 2004, LB 962, § 44; Laws 2019, LB302, § 25.

**46-705 Act; how construed.**

Nothing in the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services provided in the Nebraska Safe Drinking Water Act.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environment and Energy provided in Chapter 81, article 15.

**Source:** Laws 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261; R.S.1943, (1998), § 46-656.04; Laws 2004, LB 962, § 45; Laws 2007, LB296, § 203; Laws 2019, LB302, § 26.

**Cross References**

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

**46-706 Terms, defined.**

For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

(1) Person means a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(2) Ground water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Contamination or contamination of ground water means nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

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

(5) Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with

rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(6) To commence construction of a water well means the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(7) Management area means any area so designated by a district pursuant to section 46-712 or 46-718, by the Director of Environment and Energy pursuant to section 46-725, or by the Interrelated Water Review Board pursuant to section 46-719. Management area includes a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to section 46-711;

(9) Ground water reservoir life goal means the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

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

(11) Acre-inch means the amount of water necessary to cover an acre of land one inch deep;

(12) Subirrigation or subirrigated land means the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(13) Best management practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(14) Point source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environment and Energy has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(15) Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(16) Rotation means a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(17) Water well has the same meaning as in section 46-601.01;

(18) Surface water project sponsor means an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6;

(19) Beneficial use means that use by which water may be put to use to the benefit of humans or other species;

(20) Consumptive use means the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made;

(21) Dewatering well means a well constructed and used solely for the purpose of lowering the ground water table elevation;

(22) Emergency situation means any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, district, or organization responsible for regulating water use from such source reasonably and in good faith believes that such use is necessary to protect the public health, safety, and welfare, including, if applicable, compliance with federal or state water quality standards;

(23) Good cause shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the granting agency, district, or organization reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought;

(24) Historic consumptive use means the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

(25) Monitoring well means a water well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for consumptive use;

(26) Order, except as otherwise specifically provided, includes any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation, or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board;

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 46-713 to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 46-714;

(28) Test hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions;

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable;

(30) Certified irrigated acres means the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district; and

(31) Certified water uses means beneficial uses of ground water for purposes other than irrigation identified by a district pursuant to rules adopted by the district.

**Source:** Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9; Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1; Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2; Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5; Laws 1986, LB 894, § 21; Laws 1991, LB 51, § 1; Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279; Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1; Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657; Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190; Laws 2001, LB 135, § 1; Laws 2003, LB 93, § 1; R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46; Laws 2006, LB 1226, § 21; Laws 2009, LB477, § 4; Laws 2009, LB483, § 2; Laws 2019, LB302, § 27.

**Cross References**

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

**46-707 Natural resources district; powers; enumerated; fee.**

(1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environment and Energy on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) Issue cease and desist orders, following three days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and

to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

(3) In addition to the powers enumerated in subsections (1) and (2) of this section, a district may assess a fee against a person requesting a variance to cover the administrative cost of consideration of the variance, including, but not limited to, costs of copying records and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

**Source:** Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5; Laws 2012, LB743, § 1; Laws 2014, LB513, § 1; Laws 2019, LB302, § 28.

**46-708 Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.**

(1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation.

(2) Each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section 46-743, rules and regulations necessary to control or prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and

criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may, upon three days' notice to the person affected, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

**Source:** Laws 1975, LB 577, § 9; Laws 1978, LB 217, § 1; R.S.1943, (1993), § 46-664; Laws 1996, LB 108, § 17; R.S.1943, (1998), § 46-656.11; Laws 2004, LB 962, § 48; Laws 2014, LB513, § 2.

#### **46-711 Ground water management plan; director; review; duties.**

(1) The Director of Natural Resources shall review any ground water management plan or plan modification submitted by a district to ensure that the best available studies, data, and information, whether previously existing or newly initiated, were utilized and considered and that such plan is supported by and is a reasonable application of such information. If a management area is proposed and the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environment and Energy regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her specific findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

(2) If the Director of Natural Resources disapproves a ground water management plan, the district which submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 46-712.

**Source:** Laws 1982, LB 375, § 5; Laws 1986, LB 894, § 27; Laws 1993, LB 3, § 12; R.S.1943, (1993), § 46-673.03; Laws 1996, LB 108, § 20; Laws 2000, LB 900, § 192; R.S.Supp.,2002, § 46-656.14; Laws 2004, LB 962, § 51; Laws 2019, LB302, § 29.

#### **46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.**

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the

department and the natural resources districts jointly agree to an extension of not more than two additional years.

(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, unless such regulation is necessary to carry out the goals and objectives of a basin-wide plan pursuant to section 46-755, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;



(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with section 46-713, after the date of such designation or preliminary determination.

(5)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (4) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (5) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

**Source:** Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23; Laws 2009, LB54, § 3; Laws 2010, LB764, § 1; Laws 2014, LB1098, § 14.

#### **46-721 Contamination; reports required.**

Each state agency and political subdivision shall promptly report to the Department of Environment and Energy any information which indicates that contamination is occurring.

**Source:** Laws 1986, LB 894, § 2; Laws 1993, LB 3, § 15; R.S.1943, (1993), § 46-674.03; Laws 1996, LB 108, § 41; R.S.1943, (1998), § 46-656.35; Laws 2004, LB 962, § 61; Laws 2019, LB302, § 30.

**46-722 Contamination; Department of Environment and Energy; conduct study; when; report.**

If, as a result of information provided pursuant to section 46-721 or studies conducted by or otherwise available to the Department of Environment and Energy and following preliminary investigation, the Director of Environment and Energy makes a preliminary determination (1) that there is reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future and (2) that the natural resources district or districts in which the area is located have not designated a management area or have not implemented adequate controls to prevent such contamination from occurring, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. During the study, the department shall consider the relevant water quality portions of the management plan developed by each district pursuant to sections 46-709 to 46-711, whether the district has designated a management area encompassing the area studied, and whether the district has adopted any controls for the area.

**Source:** Laws 1986, LB 894, § 3; Laws 1993, LB 3, § 16; R.S.1943, (1993), § 46-674.04; Laws 1996, LB 108, § 42; R.S.1943, (1998), § 46-656.36; Laws 2004, LB 962, § 62; Laws 2019, LB302, § 31.

**46-723 Contamination; point source; Director of Environment and Energy; duties.**

If the Director of Environment and Energy determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

**Source:** Laws 1986, LB 894, § 4; Laws 1993, LB 3, § 17; R.S.1943, (1993), § 46-674.05; Laws 1996, LB 108, § 43; R.S.1943, (1998), § 46-656.37; Laws 2004, LB 962, § 63; Laws 2019, LB302, § 32.

**Cross References**

**Environmental Protection Act**, see section 81-1532.

**46-724 Contamination; not point source; Director of Environment and Energy; duties; hearing; notice.**

If the Director of Environment and Energy determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environment and Energy shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-725 to 46-729.

If the Director of Environment and Energy determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-722, consult

with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environment and Energy as he or she deems necessary, the director shall determine whether a management area shall be designated.

**Source:** Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9; Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06; Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260; Laws 2000, LB 900, § 201; R.S.Supp.,2002, § 46-656.38; Laws 2004, LB 962, § 64; Laws 2007, LB296, § 204; Laws 2019, LB302, § 33.

**46-725 Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order.**

(1) When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environment and Energy shall consider:

(a) Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;

(b) Whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water;

(c) Whether methods are available to stabilize or reduce the level of contamination;

(d) Whether, if a management area has been established which includes the affected area, the controls adopted by the district pursuant to section 46-739 as administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and

(e) Administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environment and Energy determines that no such area should be established, he or she shall issue an order declaring that no management area shall be designated.

(3) If the Director of Environment and Energy determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action

plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environment and Energy shall include the specific reasons for the creation of the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined or modified, the Director of Environment and Energy shall issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area. Such order shall be published in the manner provided in section 46-744.

**Source:** Laws 1986, LB 894, § 6; Laws 1991, LB 51, § 10; Laws 1993, LB 3, § 19; R.S.1943, (1993), § 46-674.07; Laws 1996, LB 108, § 45; R.S.1943, (1998), § 46-656.39; Laws 2004, LB 962, § 65; Laws 2019, LB302, § 34.

**46-726 Management area; contamination; action plan; preparation by district; when; hearing; notice; publication.**

(1) Within one hundred eighty days after the designation of a management area or the requiring of an action plan for a management area, a purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environment and Energy. Notice of the district's order adopting an action plan shall be published as required by section 46-744.

**Source:** Laws 1986, LB 894, § 7; Laws 1991, LB 51, § 11; R.S.1943, (1993), § 46-674.08; Laws 1996, LB 108, § 46; Laws 2000, LB 900, § 202; R.S.Supp.,2002, § 46-656.40; Laws 2004, LB 962, § 66; Laws 2019, LB302, § 35.

**46-728 Management area; contamination; adoption or amendment of action plan; considerations; procedures.**

(1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement

of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environment and Energy shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If the director denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days after denial of its original action plan to the director for approval subject to section 46-731.

**Source:** Laws 1986, LB 894, § 9; Laws 1991, LB 51, § 13; Laws 1993, LB 3, § 20; R.S.1943, (1993), § 46-674.10; Laws 1996, LB 108, § 48; R.S.1943, (1998), § 46-656.42; Laws 2004, LB 962, § 68; Laws 2019, LB302, § 36.

**46-729 Management area; contamination; action plan; district publish order adopted.**

Following approval of the action plan by the Director of Environment and Energy, the district shall cause a copy of the order adopted pursuant to section 46-728 to be published in the manner provided in section 46-744.

**Source:** Laws 1986, LB 894, § 10; Laws 1993, LB 3, § 21; R.S.1943, (1993), § 46-674.11; Laws 1996, LB 108, § 49; R.S.1943, (1998), § 46-656.43; Laws 2004, LB 962, § 69; Laws 2019, LB302, § 37.

**46-730 Management area; action plan; district; duties.**

Each district in which a management area has been designated or an action plan for a management area has been required pursuant to section 46-725 shall, in cooperation with the Department of Environment and Energy, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

**Source:** Laws 1986, LB 894, § 17; Laws 1991, LB 51, § 16; Laws 1993, LB 3, § 27; R.S.1943, (1993), § 46-674.18; Laws 1996, LB 108, § 50; R.S.1943, (1998), § 46-656.44; Laws 2004, LB 962, § 70; Laws 2019, LB302, § 38.

**46-731 Management area; action plan; director specify controls; when; powers and duties; hearing.**

(1) The power to specify controls authorized by section 46-739 shall vest in the Director of Environment and Energy if (a) at the end of one hundred eighty days following the designation of a management area or the requiring of an action plan for a management area pursuant to section 46-725, a district encompassed in whole or in part by the management area has not completed and adopted an action plan, (b) a district does not submit a revised action plan

within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the director.

(2) If the power to specify controls in such a management area is vested in the Director of Environment and Energy, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-743. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Environment and Energy.

**Source:** Laws 1986, LB 894, § 11; Laws 1991, LB 51, § 14; Laws 1993, LB 3, § 22; R.S.1943, (1993), § 46-674.12; Laws 1996, LB 108, § 51; R.S.1943, (1998), § 46-656.45; Laws 2004, LB 962, § 71; Laws 2019, LB302, § 39.

**46-732 Action plan; controls; duration; amendment of plan.**

The controls in the action plan approved by the Director of Environment and Energy pursuant to section 46-728 shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

**Source:** Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.13; Laws 1996, LB 108, § 52; R.S.1943, (1998), § 46-656.46; Laws 2004, LB 962, § 73; Laws 2019, LB302, § 40.

**46-733 Removal of designation management area or requirement of action plan; modification of boundaries; when.**

A district may petition the Director of Environment and Energy to remove the director's designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section 46-725. If the director determines that the level of contamination in a management area has stabilized at or been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

**Source:** Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.47; Laws 2004, LB 962, § 73; Laws 2019, LB302, § 41.

**46-743 Public hearing; requirements.**

Any public hearing required under the Nebraska Ground Water Management and Protection Act shall comply with the following requirements:

(1) The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area or affected by the proposed rule or regulation;



(2) Notice of the hearing shall be published in a newspaper published or of general circulation in the affected area at least once each week for three consecutive weeks, the last publication of which shall be not less than seven days prior to the hearing;

(3) As to the designation of a management area, adoption or amendment of an action plan or integrated management plan, or adoption or amendment of controls, the notice shall provide, as applicable, a general description of (a) the contents of the plan, (b) the geographic area which will be considered for inclusion in the management area, and (c) a general description of all controls proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed plan or controls may be obtained;

(4) For all other rules and regulations, the notice shall provide a general description of the contents of the rules and regulations proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed rules and regulations may be obtained;

(5) The full text of all controls, rules, or regulations shall be available to the public upon request not later than the date of first publication;

(6) All interested persons shall be allowed to appear and present testimony; and

(7) The hearing shall include testimony of a representative of the Department of Natural Resources and, if the primary purpose of the proposed management area is protection of water quality, testimony of a representative of the Department of Environment and Energy and shall include the results of any relevant water quality studies or investigations conducted by the district.

**Source:** Laws 2004, LB 962, § 83; Laws 2019, LB302, § 42.

#### **46-749 Administration of act; compliance with other laws.**

In the administration of the Nebraska Ground Water Management and Protection Act, all actions of the Director of Environment and Energy, the Director of Natural Resources, and the districts shall be consistent with the provisions of section 46-613.

**Source:** Laws 1975, LB 577, § 16; Laws 1984, LB 1071, § 13; R.S.1943, (1993), § 46-671; Laws 1996, LB 108, § 71; Laws 2000, LB 900, § 217; R.S.Supp.,2002, § 46-656.65; Laws 2004, LB 962, § 89; Laws 2019, LB302, § 43.

#### **46-750 Appeal; procedure.**

Any person aggrieved by any order of the district, the Director of Environment and Energy, or the Director of Natural Resources issued pursuant to the Nebraska Ground Water Management and Protection Act may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1975, LB 577, § 14; Laws 1984, LB 1071, § 11; Laws 1988, LB 352, § 78; R.S.1943, (1993), § 46-669; Laws 1996, LB 108, § 72; Laws 2000, LB 900, § 218; R.S.Supp.,2002, § 46-656.66; Laws 2004, LB 962, § 90; Laws 2019, LB302, § 44.

#### **Cross References**

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

**46-752 Repealed. Laws 2020, LB1009, § 8.****46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.**

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. 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 fund shall be administered by the department. The department may adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

**Source:** Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3; Laws 2019, LB319, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**46-755 Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.**

This section shall apply notwithstanding any other provision of the Nebraska Ground Water Management and Protection Act.

(1) If a river basin as described in subdivision (2)(a) of section 2-1504 includes three or more natural resources districts that, pursuant to subdivision (1)(a) of section 46-715, have been or are required to develop an integrated management plan for all or substantially all (eighty-five percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies, except that any natural resources district that has developed and implemented a basin-wide plan pursuant to subsection (5) of section 46-715 shall not be affected by this section. If deemed appropriate by the department and the affected natural resources districts, the basin-wide plan may combine two or more river basins.

(2) An integrated management plan developed under subdivision (1)(a) or (b) of section 46-715 shall ensure such integrated management plan is consistent with any basin-wide plan developed pursuant to this section. However, an integrated management plan may implement additional incentive programs or controls pursuant to section 46-739 if the programs and controls are consistent with the basin-wide plan.

(3) A basin-wide plan shall be completed, adopted, and take effect within three years after April 17, 2014, unless the department and the natural resources districts jointly agree to an extension of not more than an additional two years.

(4) A basin-wide plan shall (a) have clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term, (b) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, and (c) set forth a timeline to meet the goals and objectives as required under this subdivision, but in no case shall a timeline exceed thirty years after April 17, 2014.

(5)(a) A basin-wide plan developed under this section shall utilize the best generally-accepted methodologies and available information, data, and science to evaluate the effect of existing uses of hydrologically connected water on existing surface water and ground water users. The plan shall include a process to gather and evaluate data, information, and methodologies to increase understanding of the surface water and hydrologically connected ground water system within the basin, subbasin, or reach and test the validity of the conclusions, information, and assumptions upon which the plan is based.

(b) A basin-wide plan developed under this section shall include a schedule indicating the end date by which the stated goals and objectives are to be achieved and the management actions to be taken to achieve the goals and objectives. To ensure that reasonable progress is being made toward achieving the final goals and objectives of the plan, the schedule shall also include measurable hydrologic objectives and intermediate dates by which the objectives are expected to be met and monitoring plans to measure the extent to which the objectives are being achieved. Such intermediate objectives shall be established in a manner that, if achieved on schedule, will provide a reasonable expectation that the goals of the plan will be achieved by the established end date.

(c) A basin-wide plan shall be developed using a consultation and collaboration process involving representatives from irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, ground water users, range livestock owners, the Game and Parks Commission, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to become an official participant in such process. The department and affected natural resources districts shall involve official participants in formulating, evaluating, and recommending plans and management actions and work to reach an agreement among all official participants involved in a basin-wide plan. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and the affected natural resources districts shall adopt the agreed-upon basin-wide plan. If agreement cannot be reached by all parties involved, the basin-wide plan shall be developed and adopted by the department and the affected natural resources districts or by the Interrelated Water Review Board pursuant to section 46-719.

(d) Within five years after the adoption of the basin-wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan. The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives pursuant to subdivision (4)(a) of this section. The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications. The department shall submit a report to the Legislature of the results of this analysis and the progress made under the basin-wide plan. The report shall be submitted electronically. Any official participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature.

(e) Before adoption of a basin-wide plan, the department and affected natural resources districts shall schedule at least one public hearing to take testimony on the proposed plan. Any such hearings shall be held in reasonable proximity to the area affected by the plan. Notice of hearings shall be published as provided in section 46-743. All interested persons may appear at any hearings and present testimony or provide other evidence relevant to the issues under consideration. Within sixty days after the final hearing, the department and affected natural resources districts shall jointly determine whether to adopt the plan.

(f) The department and the affected natural resources districts may utilize, when necessary, the Interrelated Water Review Board process provided in

section 46-719 for disputes arising from developing, implementing, and enforcing a basin-wide plan developed under this section.

**Source:** Laws 2014, LB1098, § 15.

**46-756 Ground water augmentation project; public hearing; notice.**

On and after April 17, 2014, a board shall not vote to enter into a ground water augmentation project without conducting a public hearing on the project, with notice of the hearing given as provided in section 46-743.

**Source:** Laws 2014, LB1098, § 16.

**ARTICLE 11  
CHEMIGATION**

Section

46-1101.	Act, how cited.
46-1102.	Legislative findings.
46-1103.	Definitions, sections found.
46-1108.	Department, defined.
46-1109.	Director, defined.
46-1116.01.	Working day, defined.
46-1117.	Permit required; exception; application.
46-1118.	Repealed. Laws 2011, LB 2, § 8.
46-1119.	Emergency permit; application; fee; violation; penalty.
46-1121.	Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.
46-1123.	Districts; annual reports; contents.
46-1125.	Permit denial, suspension, revocation; grounds.
46-1139.	Engaging in chemigation without a permit; penalty; recovery of costs.
46-1140.	Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.
46-1141.	Tampering with chemigation equipment; penalty; recovery of costs.
46-1142.	Failure to notify of accident; penalty; recovery of costs.
46-1143.	Other violations; penalty; recovery of costs.

**46-1101 Act, how cited.**

Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

**Source:** Laws 1986, LB 284, § 1; Laws 1988, LB 1046, § 1; Laws 2014, LB272, § 1.

**46-1102 Legislative findings.**

The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water.

The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environment and Energy with the

authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

**Source:** Laws 1986, LB 284, § 2; Laws 1993, LB 3, § 28; Laws 2019, LB302, § 45.

**46-1103 Definitions, sections found.**

For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116.01 shall apply.

**Source:** Laws 1986, LB 284, § 3; Laws 2014, LB272, § 2.

**46-1108 Department, defined.**

Department shall mean the Department of Environment and Energy.

**Source:** Laws 1986, LB 284, § 8; Laws 1993, LB 3, § 30; Laws 2019, LB302, § 46.

**46-1109 Director, defined.**

Director shall mean the Director of Environment and Energy.

**Source:** Laws 1986, LB 284, § 9; Laws 1993, LB 3, § 31; Laws 2019, LB302, § 47.

**46-1116.01 Working day, defined.**

Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

**Source:** Laws 2014, LB272, § 3.

**46-1117 Permit required; exception; application.**

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be

construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

**Source:** Laws 1986, LB 284, § 17; Laws 2011, LB2, § 4; Laws 2011, LB28, § 1.

**46-1118 Repealed. Laws 2011, LB 2, § 8.**

**46-1119 Emergency permit; application; fee; violation; penalty.**

(1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within two working days after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within two working days, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee as established in section 46-1121 not to exceed five hundred dollars payable to the district. For each permit, ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

**Source:** Laws 1986, LB 284, § 19; Laws 2014, LB272, § 4.

**46-1121 Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.**

(1) To aid in defraying the cost of administration of the Nebraska Chemigation Act, the district shall collect an initial application fee for a permit, a special permit fee, an annual renewal fee, and an emergency permit fee. The fees shall be established by the district and shall be sufficient to cover the ongoing administrative costs and the costs of annual inspection programs by the district and department. The fees collected pursuant to this section shall be established by the district in the amount necessary to pay reasonable costs of administering the permit program pursuant to the act. The fee for a permit and special permit shall not exceed one hundred fifty dollars. The fee for a renewal permit shall not exceed one hundred dollars. The fee for an emergency permit under section 46-1119 shall not exceed five hundred dollars. The district shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the district by a person or persons applying for a permit to operate a chemigation system.

(2) The fee for initial application for a permit or special permit shall be payable to the district. For each permit, five dollars shall be paid by the district to the department.

(3) The annual fee for renewal of a permit or special permit shall be payable to the district. For each permit, two dollars of the annual fee shall be paid by the district to the department.

(4) All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs 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.

(5) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

**Source:** Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43; Laws 2009, First Spec. Sess., LB3, § 21; Laws 2014, LB272, § 5.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**46-1123 Districts; annual reports; contents.**

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

**Source:** Laws 1986, LB 284, § 23; Laws 2011, LB28, § 2.

**46-1125 Permit denial, suspension, revocation; grounds.**

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

- (1) Practice of fraud or deceit in obtaining a permit; or
- (2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

**Source:** Laws 1986, LB 284, § 25; Laws 2011, LB2, § 5.

**46-1139 Engaging in chemigation without a permit; penalty; recovery of costs.**

Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.



When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

**Source:** Laws 1986, LB 284, § 39; Laws 2015, LB207, § 1.

**46-1140 Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.**

Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

**Source:** Laws 1986, LB 284, § 40; Laws 2015, LB207, § 2.

**46-1141 Tampering with chemigation equipment; penalty; recovery of costs.**

Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

**Source:** Laws 1986, LB 284, § 41; Laws 2015, LB207, § 3.

**46-1142 Failure to notify of accident; penalty; recovery of costs.**

Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

**Source:** Laws 1986, LB 284, § 42; Laws 2015, LB207, § 4.

**46-1143 Other violations; penalty; recovery of costs.**

Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

**Source:** Laws 1986, LB 284, § 43; Laws 2015, LB207, § 5.

**ARTICLE 12****WATER WELL STANDARDS AND CONTRACTORS' LICENSING**

## Section

- 46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.  
 46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

**46-1217 Water Well Standards and Contractors' Licensing Board; created; members; qualifications.**

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environment and Energy or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

**Source:** Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB296, § 209; Laws 2007, LB463, § 1155; Laws 2019, LB302, § 48.

## Cross References

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-151, 38-155, and 38-158 to 38-174.

**46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.**

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the online services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. 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) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and

shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

**Source:** Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2; Laws 2019, LB302, § 49.

**Cross References**

**Industrial Ground Water Regulatory Act**, see section 46-690.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**ARTICLE 13**

**WATER QUALITY MONITORING**

**Section**

46-1301. Legislative findings.

46-1304. Report required; Department of Environment and Energy; duties.

46-1305. Report required; natural resources district; duties.

**46-1301 Legislative findings.**

The Legislature finds that (1) existing monitoring of ground water quality performed by natural resources districts is excellent and deserves recognition, (2) substantial efforts have been undertaken by the Department of Environment and Energy to monitor surface water quality, and (3) it is within the state's capacity to develop a comprehensive, integrated statewide water quality monitoring system.

**Source:** Laws 2000, LB 1234, § 18; Laws 2019, LB302, § 50.

**46-1304 Report required; Department of Environment and Energy; duties.**

The Department of Environment and Energy shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results electronically to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

**Source:** Laws 2001, LB 329, § 11; Laws 2012, LB782, § 56; Laws 2019, LB302, § 51.

**46-1305 Report required; natural resources district; duties.**

Each natural resources district shall submit electronically an annual report to the Natural Resources Committee of the Legislature detailing all water quality programs conducted by the district in the preceding calendar year. The report shall include the funds received and expended for water quality projects and a listing of any unfunded projects. The first report shall be submitted on or before December 1, 2001, and then each December 1 thereafter.

**Source:** Laws 2001, LB 329, § 12; Laws 2012, LB782, § 57.

## ARTICLE 15

### WELLHEAD PROTECTION AREA ACT

Section

46-1502. Terms, defined.

#### **46-1502 Terms, defined.**

For purposes of the Wellhead Protection Area Act:

(1) Controlling entity means a city, a village, a natural resources district, a rural water district, any other entity, including, but not limited to, a privately owned public water supply system, or any combination thereof operating under an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that operates a public water supply system;

(2) Department means the Department of Environment and Energy;

(3) Director means the Director of Environment and Energy; and

(4) Wellhead protection area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

**Source:** Laws 1998, LB 1161, § 3; Laws 1999, LB 87, § 73; Laws 2019, LB302, § 52.

#### Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

## ARTICLE 16

### SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1642. Livestock waste control facility; approvals required.

46-1654. Application approval; issuance; public hearing; notice to department; when.

46-1657. New or modified dam; owner; filing requirements; approval to operate; issuance.

#### **46-1642 Livestock waste control facility; approvals required.**

An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required but for which approval by the Department of Environment and Energy under section 54-2429 is required shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval from the Department of Natural Resources before beginning construction. The

Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon pursuant to this section within sixty days after such application is submitted.

**Source:** Laws 2005, LB 335, § 42; Laws 2019, LB302, § 53.

**46-1654 Application approval; issuance; public hearing; notice to department; when.**

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

**Source:** Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2; Laws 2011, LB32, § 1.

**46-1657 New or modified dam; owner; filing requirements; approval to operate; issuance.**

(1) Upon completion of a new or reconstructed dam and reservoir or of the enlargement of a dam and reservoir, the owner shall file with the department, without a filing fee, a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the work as actually completed. Such supplementary materials may include, but need not be limited to, the following as determined by the department:

(a) A record of all geological boreholes and grout holes and grouting;

(b) A record of permanent location points, benchmarks, and instruments embedded in the structure;

(c) A record of tests of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and

(d) A record of initial seepage flows and embedded instrument readings.

(2) In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

(3) An approval to operate shall be issued by the department upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

**Source:** Laws 2005, LB 335, § 57; Laws 2017, LB154, § 1.

**ARTICLE 17**

**WATER AUGMENTATION PROJECT**

Section

46-1701. Water augmentation project for streamflow enhancement; joint entity or natural resources district; voluntary payments in lieu of taxes; duties; notice; hearing; annual report; contents.

**46-1701 Water augmentation project for streamflow enhancement; joint entity or natural resources district; voluntary payments in lieu of taxes; duties; notice; hearing; annual report; contents.**

(1) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that acquires title to private lands for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, may agree to make voluntary payments in lieu of taxes to the county treasurer of the county in which the land is located. A payment in lieu of tax may be made for any year in which the joint entity or natural resources district owns the land, including any year prior to March 1, 2018. The amount of the payment in lieu of tax for any year shall not be more than the real property taxes that would have been paid on the land if the land were subject to taxation. The county treasurer shall allocate the payment in lieu of tax to the taxing units in the county in the same proportion that property taxes would have been allocated to such taxing units if the land were subject to taxation.

(2) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that has secured a contract or memorandum of agreement to acquire title to private land for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, shall:

(a) Provide public notice of the joint entity’s or district’s intention to proceed with the water augmentation project. The notice shall include the project’s intended purpose, an estimate of the amount of water that will be pumped for the purpose of augmentation, and the timeframe in which the water will be used;

(b) Hold a public hearing and accept public comment on the project; and

(c) Seek the input of officials from the county in which the project will be located and adjoining landowners on ways to minimize the effects of the project on the county.

(3)(a) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that is operating a water augmentation project for

streamflow enhancement shall publish an annual report that includes the following information regarding the project:

- (i) Details on the operation of the project;
- (ii) The amount of water pumped;
- (iii) The amount of land leased and for what purposes;
- (iv) The amount of revenue gained from land leases;
- (v) The amount of payments made in lieu of taxes;
- (vi) Financial details of the project, including the amount of debt, the amount of outstanding bonds and loans, and the project budget;
- (vii) Whether the project is achieving its intended purpose;
- (viii) The effect of the project on ground water supplies; and
- (ix) Projections for use of the project in the future and the effect of the use on ground water supplies.

(b) The joint entity or natural resources district shall provide public notice and hold a public hearing to allow an opportunity for public comment on the report required under subdivision (3)(a) of this section.

(4) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that has acquired title to private lands for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, shall submit all leases relating to such lands to the appropriate county assessor within thirty days after the effective date of the lease.

**Source:** Laws 2018, LB758, § 1.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.



**CHAPTER 47**  
**JAILS AND CORRECTIONAL FACILITIES**

Article.

1. County Jails. 47-101 to 47-116.
2. City Jails. 47-201 to 47-206.
4. Permission to Leave Jail; House Arrest. 47-401.
5. Sentence Reductions and Credits. 47-502.
6. Community Corrections. 47-621 to 47-639.
7. Medical Services. 47-701 to 47-706.
9. Office of Inspector General of the Nebraska Correctional System Act. 47-901 to 47-920.
10. Healthy Pregnancies for Incarcerated Women Act. 47-1001 to 47-1007.

**ARTICLE 1**  
**COUNTY JAILS**

Section

- 47-101. County jails; regulation; duties and powers of Jail Standards Board.
- 47-101.01. Telephone services for inmates; use of funds.
- 47-101.02. Inmate communications; Jail Standards Board; duties.
- 47-108. Grand jury; instructions with respect to jails and discipline; duty of district court.
- 47-109. Jails; inspection; duty of grand juries and county boards; reports.
- 47-116. Jails; sheriff or jailer; neglect of duty; penalty.

**47-101 County jails; regulation; duties and powers of Jail Standards Board.**

The Jail Standards Board shall, each January, and at such other time or times as it may deem necessary, prescribe, in writing, rules for the regulation and government of the jails upon the following subjects: (1) The cleanliness of the jail and prisoners; (2) the classification of prisoners in regard to sex, age, and crime, and also persons with physical or mental disabilities; (3) beds, clothing, and diet; (4) warming, lighting, and ventilation of the jail; (5) the employment of medical and surgical aid when necessary; (6) employment, temperance, and instruction of the prisoners; (7) the supplying of each prisoner with a Bible or other written religious material; (8) the intercourse between prisoners and their counsel and other persons, including access to telephones or videoconferencing as required in section 47-101.01; (9) the discipline of prisoners for violation of the rules of the jail; and (10) such other matters as the board may deem necessary to promote the welfare of the prisoners.

**Source:** R.S.1866, c. 29, § 1, p. 242; R.S.1913, § 3529; C.S.1922, § 2996; C.S.1929, § 47-101; R.S.1943, § 47-101; Laws 1986, LB 1177, § 24; Laws 1996, LB 233, § 2; Laws 2018, LB776, § 1.

**47-101.01 Telephone services for inmates; use of funds.**

(1) Each county jail shall make available either a prepaid telephone call system or collect telephone call system, or a combination thereof, for telephone services for inmates. Under either system, the provision of inmate telephone services shall be subject to the requirements of this section.

(2) Under a prepaid system, funds may be deposited into an inmate account in order to pay for telephone calls. The provider of the inmate telephone services, as an additional means of payment, shall permit the recipient of inmate collect telephone calls to establish an account with that provider in order to deposit funds for advance payment of those collect telephone calls. The provider of the inmate telephone services shall also allow inmates to communicate on the telephone, or by videoconferencing, with an attorney or attorneys without charge and without monitoring or recording by the county jail or law enforcement.

(3) A county operating a county jail may receive revenue for the reasonable operating costs for establishing and administering such telephone services system or videoconferencing system, but shall not receive excessive commissions or bonus payments. In determining the amount of such reasonable operating costs, the Jail Standards Board may consider for comparative purposes the rates for inmate calling services provided in 47 C.F.R. part 64. Amounts in excess of the reasonable operating costs include, but are not limited to, any excessive commissions and bonus payments, as determined by the Jail Standards Board, including, but not limited to, awards paid to a county for contracting with an entity that provides such service.

(4) Nothing in this section shall require a county jail to provide or administer a prepaid telephone call system.

(5) For the purposes of this section, collect telephone call system means a system pursuant to which recipients are billed for the cost of an accepted telephone call initiated by an inmate.

**Source:** Laws 2018, LB776, § 2.

#### **47-101.02 Inmate communications; Jail Standards Board; duties.**

The Jail Standards Board shall ensure that county jails are providing inmates with means to communicate by telephone or videoconferencing with inmates' families, loved ones, and counsel.

**Source:** Laws 2018, LB776, § 3.

#### **47-108 Grand jury; instructions with respect to jails and discipline; duty of district court.**

It shall be the duty of the district court in its charge to the grand jury to inform the jury of the provisions of sections 47-101 to 47-116 and all rules, plans, or regulations established by the Jail Standards Board relating to county jails and prison discipline.

**Source:** R.S.1866, c. 29, § 8, p. 245; R.S.1913, § 3536; C.S.1922, § 3003; C.S.1929, § 47-108; R.S.1943, § 47-108; Laws 1996, LB 233, § 8; Laws 2018, LB776, § 4.

#### **47-109 Jails; inspection; duty of grand juries and county boards; reports.**

The grand jury of each county in this state may, while in attendance, visit the jail, examine its state and condition, and examine and inquire into the discipline and treatment of prisoners, their habits, diet, and accommodations. If the grand jury visits a jail, it shall be its duty to report to the court in writing, whether the rules of the Jail Standards Board have been faithfully kept and observed, or whether any of the provisions of sections 47-101 to 47-116, have

been violated, pointing out particularly in what the violation, if any, consists. It shall also be the duty of the county board of each county of this state to visit the jail of its county once during each of its sessions in January, April, July, and October of each year.

**Source:** R.S.1866, c. 29, § 9, p. 245; R.S.1913, § 3537; C.S.1922, § 3004; C.S.1929, § 47-109; R.S.1943, § 47-109; Laws 1961, c. 232, § 1, p. 687; Laws 1996, LB 233, § 9; Laws 2018, LB776, § 5.

#### **47-116 Jails; sheriff or jailer; neglect of duty; penalty.**

If the sheriff or jailer, having charge of any county jail, shall neglect or refuse to conform to all or any of the rules and regulations established by the Jail Standards Board, or to perform any other duty required of him or her by sections 47-101 to 47-116, he or she shall, upon conviction thereof for each case of such failure or neglect of duty, pay into the county treasury of the proper county for the use of such county a fine of not less than five dollars nor more than one hundred dollars, to be assessed by the district court of the proper district.

**Source:** R.S.1866, c. 29, § 14, p. 246; R.S.1913, § 3542; C.S.1922, § 3009; C.S.1929, § 47-114; R.S.1943, § 47-116; Laws 1996, LB 233, § 11; Laws 2018, LB776, § 6.

## **ARTICLE 2**

### **CITY JAILS**

#### Section

- 47-201. City jails; regulation; duties and powers of Jail Standards Board.  
 47-201.01. Telephone services for inmates; use of funds.  
 47-201.02. Inmate communications; Jail Standards Board; duties.  
 47-206. Jailer; neglect of duty; penalty.

#### **47-201 City jails; regulation; duties and powers of Jail Standards Board.**

The Jail Standards Board shall, each January, and at such other time or times as it may deem necessary, prescribe written rules for the regulation and government of the municipal jails upon the subjects of (1) the cleanliness of the jail and prisoners, (2) the classification of prisoners in regard to sex, age, crime, and also persons with physical or mental disabilities, (3) beds, clothing, and diet, (4) warming, lighting, and ventilation of the jail, (5) the employment of medical and surgical aid, (6) the employment, temperance, and instruction of the prisoners, (7) the intercourse between prisoners and their attorneys and other persons, including access to telephones or videoconferencing as required by section 47-201.01, (8) the discipline of prisoners, (9) the keeping of records of the jail, and (10) any other matters concerning jails and their government as the board may deem necessary.

**Source:** Laws 1915, c. 208, § 1, p. 462; C.S.1922, § 3010; C.S.1929, § 47-115; R.S.1943, § 47-201; Laws 1996, LB 233, § 12; Laws 2018, LB776, § 7.

#### **47-201.01 Telephone services for inmates; use of funds.**

(1) Each city jail shall make available either a prepaid telephone call system or collect telephone call system, or a combination thereof, for telephone

services for inmates. Under either system, the provision of inmate telephone services shall be subject to the requirements of this section.

(2) Under a prepaid system, funds may be deposited into an inmate account in order to pay for telephone calls. The provider of the inmate telephone services, as an additional means of payment, shall permit the recipient of inmate collect telephone calls to establish an account with that provider in order to deposit funds for advance payment of those collect telephone calls. The provider of the inmate telephone services shall also allow inmates to communicate on the telephone, or by videoconferencing, with an attorney or attorneys without charge and without monitoring or recording by the city jail or law enforcement.

(3) A city operating a city jail may receive revenue for the reasonable operating costs for establishing and administering such telephone services system or videoconferencing system, but shall not receive excessive commissions or bonus payments. In determining the amount of such reasonable operating costs, the Jail Standards Board may consider for comparative purposes the rates for inmate calling services provided in 47 C.F.R. part 64. Amounts in excess of the reasonable operating costs include, but are not limited to, any excessive commissions and bonus payments, as determined by the Jail Standards Board, including, but not limited to, awards paid to a city for contracting with an entity that provides such service.

(4) Nothing in this section shall require a city jail to provide or administer a prepaid telephone call system.

(5) For the purposes of this section, collect telephone call system means a system pursuant to which recipients are billed for the cost of an accepted telephone call initiated by an inmate.

**Source:** Laws 2018, LB776, § 8.

#### **47-201.02 Inmate communications; Jail Standards Board; duties.**

The Jail Standards Board shall ensure that city jails are providing inmates with means to communicate by telephone or videoconferencing with inmates' families, loved ones, and counsel.

**Source:** Laws 2018, LB776, § 9.

#### **47-206 Jailer; neglect of duty; penalty.**

The officer in charge of any municipal prison or jail who fails to comply with the provisions of sections 47-201 to 47-205 or the rules prescribed by the Jail Standards Board shall be guilty of a Class V misdemeanor.

**Source:** Laws 1915, c. 208, § 6, p. 463; C.S.1922, § 3015; C.S.1929, § 47-120; R.S.1943, § 47-206; Laws 1977, LB 40, § 269; Laws 1996, LB 233, § 17; Laws 2018, LB776, § 10.

### **ARTICLE 4**

#### **PERMISSION TO LEAVE JAIL; HOUSE ARREST**

Section

47-401. Person sentenced to or confined in a city or county jail; permission to leave; when; sentence served at other facility; house arrest.

**47-401 Person sentenced to or confined in a city or county jail; permission to leave; when; sentence served at other facility; house arrest.**

(1) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment;
- (b) Working at his or her employment;
- (c) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (d) Attending any high school, college, university, or other educational or vocational training program or institution;
- (e) Serious illness or death of a member of such person's immediate family;
- (f) Medical treatment;
- (g) Outpatient or inpatient treatment for alcohol or substance abuse; or
- (h) Engaging in other rehabilitative activities, including, but not limited to, attending a program or service provided at a reporting center.

(2) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving the sentence or a part of the sentence at a house of correction, community residential center, work release center, halfway house, or other place of confinement properly designated as a jail facility in accordance with this section and sections 15-259, 47-117, 47-207, and 47-409.

(3) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving all or part of the sentence under house arrest. For purposes of this subsection, house arrest means restricting an offender to a specific residence except for authorized periods of absence for employment or for medical, educational, or other reasons approved by the court. House arrest may be monitored by electronic surveillance devices or systems.

**Source:** Laws 1969, c. 208, § 1, p. 813; Laws 1975, LB 276, § 1; Laws 1979, LB 315, § 5; Laws 1990, LB 399, § 1; Laws 2003, LB 17, § 18; Laws 2016, LB1094, § 26.

## ARTICLE 5

### SENTENCE REDUCTIONS AND CREDITS

Section

47-502. Person sentenced to or confined in jail; sentence or sanction reduction.

#### **47-502 Person sentenced to or confined in jail; sentence or sanction reduction.**

Any person sentenced to or confined in a city or county jail, including any person serving a custodial sanction imposed in response to a parole or probation violation, shall, after the fifteenth day of his or her confinement, have his

or her remaining term reduced one day for each day of his or her sentence or sanction during which he or she has not committed any breach of discipline or other violation of jail regulations.

**Source:** Laws 1982, LB 231, § 2; R.S.Supp.,1982, § 23-2811; Laws 1983, LB 180, § 5; Laws 1993, LB 113, § 2; Laws 2010, LB712, § 40; Laws 2016, LB1094, § 27.

## ARTICLE 6

### COMMUNITY CORRECTIONS

#### Section

- 47-621. Terms, defined.  
 47-622. Community Corrections Division; created.  
 47-623. Repealed. Laws 2011, LB 390, § 39.  
 47-624. Division; duties.  
 47-624.01. Division; plan for implementation and funding of reporting centers; duties.  
 47-625. Repealed. Laws 2011, LB 390, § 39.  
 47-627. Uniform crime data analysis system.  
 47-628. Community correctional programming; condition of probation.  
 47-629. Community correctional programming; paroled offenders.  
 47-630. Repealed. Laws 2011, LB 390, § 39.  
 47-631. Repealed. Laws 2011, LB 390, § 39.  
 47-632. Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.  
 47-634. Receipt of funds by local entity; local advisory committee required; plan required.  
 47-635. Repealed. Laws 2011, LB 390, § 39.  
 47-636. Repealed. Laws 2011, LB 390, § 39.  
 47-637. Repealed. Laws 2011, LB 390, § 39.  
 47-638. Repealed. Laws 2011, LB 390, § 39.  
 47-639. Repealed. Laws 2011, LB 390, § 39.

#### **47-621 Terms, defined.**

For purposes of the Community Corrections Act:

(1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

(2) Director means the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Division means the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

**Source:** Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12; Laws 2011, LB390, § 6.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**47-622 Community Corrections Division; created.**

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Division is created within the Nebraska Commission on Law Enforcement and Criminal Justice. The director shall appoint and remove employees of the division and delegate appropriate powers and duties to such employees.

**Source:** Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13; Laws 2011, LB390, § 7.

**47-623 Repealed. Laws 2011, LB 390, § 39.**

**47-624 Division; duties.**

The division shall:

(1) Collaborate with the Office of Probation Administration, the Division of Parole Supervision, and the Department of Correctional Services to develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(2) Develop, in consultation with the probation administrator and the Director of Supervision and Services of the Division of Parole Supervision, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(3) Collaborate with the Office of Probation Administration, the Division of Parole Supervision, and the Department of Correctional Services on the development of additional reporting centers as set forth in section 47-624.01;

(4) Analyze and promote the consistent use of offender risk assessment tools;

(5) Educate the courts, the Board of Parole, criminal justice system stakeholders, and the general public about the availability, use, and benefits of community correctional facilities and programs;

(6) Enter into and administer contracts, if necessary, to carry out the purposes of the Community Corrections Act;

(7) In order to ensure adequate funding for substance abuse treatment programs, consult with the probation administrator and the Director of Supervision and Services of the Division of Parole Supervision and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252 and subdivision (8) of section 83-1,102;

(8) Study substance abuse and mental health treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(9) Research and evaluate existing community correctional facilities and programs, within the limits of available funding;

(10) Develop standardized definitions of outcome measures for community correctional facilities and programs, including, but not limited to, recidivism, employment, and substance abuse;

(11) Report annually to the Legislature and the Governor on the development and performance of community correctional facilities and programs. The report submitted to the Legislature shall be submitted electronically. The report shall include, but not be limited to, the following:

(a) A description of community correctional facilities and programs currently serving offenders in Nebraska, which includes the following information:

(i) The target population and geographic area served by each facility or program, eligibility requirements, and the total number of offenders utilizing the facility or program over the past year;

(ii) Services, programs, assessments, case management, supervision, and tools provided for offenders at the facility, in the program, or under the supervision of a governmental agency in any capacity;

(iii) The costs of operating the facility or program and the cost per offender; and

(iv) The funding sources for the facility or program;

(b) The progress made in expanding community correctional facilities and programs statewide and an analysis of the need for additional community corrections services;

(c) An analysis of the impact community correctional facilities and programs have on the number of offenders incarcerated within the Department of Correctional Services; and

(d) The recidivism rates and outcome data for probationers, parolees, and problem-solving-court clients participating in community corrections programs;

(12) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act;

(13) Manage all offender data acquired by the division in a confidential manner and develop procedures to ensure that identifiable information is not released;

(14) Establish and administer grants, projects, and programs for the operation of the division; and

(15) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

**Source:** Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47; Laws 2010, LB864, § 2; Laws 2011, LB390, § 8; Laws 2012, LB782, § 58; Laws 2012, LB817, § 3; Laws 2016, LB679, § 1; Laws 2018, LB841, § 6.



**47-624.01 Division; plan for implementation and funding of reporting centers; duties.**

(1) The division shall collaborate with the Office of Probation Administration, the Division of Parole Supervision, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

(2) The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center and shall prioritize the recommendations for additional reporting centers based upon need.

(3) The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

**Source:** Laws 2010, LB864, § 3; Laws 2011, LB390, § 9; Laws 2018, LB841, § 7.

**47-625 Repealed. Laws 2011, LB 390, § 39.****47-627 Uniform crime data analysis system.**

The director shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, participants in specialized community corrections programs, admissions to and discharges from problem-solving courts, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Division of Parole Supervision, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The division and the Supreme Court shall have access to such data to implement the Community Corrections Act.

**Source:** Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17; Laws 2011, LB390, § 10; Laws 2012, LB817, § 4; Laws 2018, LB841, § 8.

**47-628 Community correctional programming; condition of probation.**

(1) A sentencing judge may sentence an offender to probation conditioned upon community correctional programming.

(2) A sentence to a community correctional program or facility shall be imposed as a condition of probation pursuant to the Nebraska Probation Administration Act. The court may modify the sentence of an offender serving a sentence in a community correctional program in the same manner as if the offender had been placed on probation.

(3) The Office of Probation Administration shall utilize community correctional facilities and programs as appropriate.

**Source:** Laws 2003, LB 46, § 40; Laws 2011, LB390, § 11.

## Cross References

Nebraska Probation Administration Act, see section 29-2269.

**47-629 Community correctional programming; paroled offenders.**

(1) The Board of Parole may parole an offender to a community correctional facility or program pursuant to guidelines developed by the division.

(2) The Department of Correctional Services and the Division of Parole Supervision shall utilize community correctional facilities and programs as appropriate.

**Source:** Laws 2003, LB 46, § 41; Laws 2011, LB390, § 12; Laws 2018, LB841, § 9.

**47-630 Repealed. Laws 2011, LB 390, § 39.****47-631 Repealed. Laws 2011, LB 390, § 39.****47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.**

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsections (2), (3), and (4) of this section, the fund shall be within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the division, and shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects. The fund shall consist of money collected pursuant to section 47-633.

(2) Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) The State Treasurer shall transfer the following amounts from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund:

(a) Two hundred thousand dollars on July 1, 2011, or as soon thereafter as administratively possible; and

(b) Two hundred thousand dollars on July 1, 2012, or as soon thereafter as administratively possible.

(4) The State Treasurer shall transfer the following amounts from the Community Corrections Uniform Data Analysis Cash Fund to the Nebraska Law Enforcement Training Center Cash Fund:

(a) Two hundred thousand dollars on July 1, 2017, or as soon thereafter as administratively possible; and

(b) Two hundred thousand dollars on July 1, 2018, or as soon thereafter as administratively possible.

(5) Any money in the Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31; Laws 2009, First Spec. Sess., LB3, § 23; Laws 2011, LB378, § 21; Laws 2011, LB390, § 13; Laws 2017, LB331, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**47-634 Receipt of funds by local entity; local advisory committee required; plan required.**

For a local entity to receive funds under the Community Corrections Act, the division shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee shall be required as set forth by the division. Such funds shall be used for the implementation of the recommendations of the division, the expansion of sentencing options, the education of the public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

**Source:** Laws 2006, LB 1113, § 48; Laws 2011, LB390, § 14.

**47-635 Repealed. Laws 2011, LB 390, § 39.**

**47-636 Repealed. Laws 2011, LB 390, § 39.**

**47-637 Repealed. Laws 2011, LB 390, § 39.**

**47-638 Repealed. Laws 2011, LB 390, § 39.**

**47-639 Repealed. Laws 2011, LB 390, § 39.**

ARTICLE 7

MEDICAL SERVICES

Section

47-701. Medical services, defined; responsibility for payment.

47-703. Payment by governmental agency; when; notice to provider.

47-706. Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

**47-701 Medical services, defined; responsibility for payment.**

(1) Notwithstanding any other provision of law, and except as provided in section 44-713, sections 47-701 to 47-705 shall govern responsibility for payment of the costs of medical services for any person ill, wounded, injured, or otherwise in need of such services at the time such person is arrested, detained, taken into custody, or incarcerated.

(2) For purposes of sections 47-701 to 47-705, the term medical services includes medical and surgical care and treatment, hospitalization, transportation, medications and prescriptions, and other associated items.

**Source:** Laws 1999, LB 112, § 1; Laws 2018, LB480, § 2.

**47-703 Payment by governmental agency; when; notice to provider.**

(1) Upon a showing that reimbursement from the sources enumerated in section 47-702 is not available, in whole or in part, the costs of medical services shall be paid by the appropriate governmental agency. Such payment shall be

made within ninety days after such showing. For purposes of this section, a showing shall be deemed sufficient if a provider of medical services signs an affidavit stating that (a) in the case of an insurer, health maintenance organization, preferred provider organization, or other similar source, a written denial of payment has been issued or (b) in all other cases, efforts have been made to identify sources and to collect from those sources and more than one hundred eighty days have passed or the normal collection efforts are exhausted since the medical services were rendered but full payment has not been received. Such affidavit shall be forwarded to the appropriate governmental agency. In no event shall the provider of medical services be required to file a suit in a court of law or retain the services of a collection agency to satisfy the requirement of showing that reimbursement is not available pursuant to this section.

(2) In the case of medical services necessitated by injuries or wounds suffered during the course of apprehension or arrest, the appropriate governmental agency chargeable for the costs of medical services shall be the apprehending or arresting agency and not the agency responsible for operation of the institution or facility in which the recipient of the services is lodged. In all other cases, the appropriate governmental agency shall be the agency responsible for operation of the institution or facility in which the recipient of the services is lodged, except that when the agency is holding the individual solely for another jurisdiction, the agency may, by contract or otherwise, seek reimbursement from the other jurisdiction for the costs of the medical services provided to the individual being held for that jurisdiction.

(3) Except as provided in section 47-705, a governmental agency shall not be responsible for paying the costs of any medical services provided to an individual if such services are provided after he or she is released from the legal custody of the governmental agency or when the individual is released on parole.

(4) Any governmental agency requesting medical services for an individual who is arrested, detained, taken into custody, or incarcerated shall notify the provider of such services of (a) all information possessed by the agency concerning potential sources of payment and (b) the name of the appropriate governmental agency pursuant to subsection (2) of this section.

**Source:** Laws 1999, LB 112, § 3; Laws 2012, LB881, § 1.

**47-706 Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.**

(1) It is the intent of the Legislature to ensure that human services agencies, correctional facilities, and detention facilities recognize that:

(a) Federal law generally does not authorize federal financial participation for medicaid when a person is an inmate of a public institution as defined in federal law but that federal financial participation is available after an inmate is released from incarceration; and

(b) The fact that an applicant is currently an inmate does not, in and of itself, preclude the Department of Health and Human Services from processing an application submitted to it by, or on behalf of, the inmate.

(2)(a) Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if:

(i) The Department of Health and Human Services is notified of the person's entry into the public institution;

(ii) On the date of entry, the person was enrolled in the medical assistance program; and

(iii) The person is eligible for the medical assistance program except for institutional status.

(b) A suspension under subdivision (2)(a) of this section shall end on the date the person is no longer an inmate of a public institution.

(c) Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.

(3)(a) The Department of Correctional Services shall notify the Department of Health and Human Services:

(i) Within twenty days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution; and

(ii) Within forty-five days prior to the release of a person who qualified for suspension under subdivision (2)(a) of this section.

(b) Local correctional facilities, juvenile detention facilities, and other temporary detention centers shall notify the Department of Health and Human Services within ten days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution.

(4) Nothing in this section shall create a state-funded benefit or program.

(5) For purposes of this section, medical assistance program means the medical assistance program under the Medical Assistance Act and the State Children's Health Insurance Program.

(6) This section shall be implemented only if, and to the extent, allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained. The Department of Health and Human Services shall seek such approval if required.

(7) Local correctional facilities, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration shall cooperate with the Department of Health and Human Services and the Department of Correctional Services for purposes of facilitating information sharing to achieve the purposes of this section.

(8)(a) The Department of Correctional Services shall adopt and promulgate rules and regulations, in consultation with the Department of Health and Human Services and local correctional facilities, to carry out this section.

(b) The Department of Health and Human Services shall adopt and promulgate rules and regulations, in consultation with the Department of Correctional Services and local correctional facilities, to carry out this section.

**Source:** Laws 2015, LB605, § 108.

## Cross References

Medical Assistance Act, see section 68-901.

## ARTICLE 9

OFFICE OF INSPECTOR GENERAL OF THE NEBRASKA  
CORRECTIONAL SYSTEM ACT

## Section

- 47-901. Act, how cited.
- 47-902. Legislative intent.
- 47-903. Terms, defined.
- 47-904. Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.
- 47-905. Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.
- 47-906. Office; access to information and personnel; investigation.
- 47-907. Complaints to office; form; full investigation; when; notice.
- 47-908. Cooperation with office; when required.
- 47-909. Failure to cooperate; effect.
- 47-910. Inspector General; powers; rights of person required to provide information.
- 47-911. Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.
- 47-912. Reports of investigations; distribution; redact confidential information; powers of office.
- 47-913. Department; provide direct computer access.
- 47-914. Inspector General's report of investigation; contents; distribution.
- 47-915. Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.
- 47-916. Report or work product; no court review.
- 47-917. Inspector General; investigation of complaints; priority and selection.
- 47-918. Summary of reports and investigations; contents.
- 47-919. Division of Parole Supervision; provide access to records, reports, and documents.
- 47-920. Limitations on personnel action.

**47-901 Act, how cited.**

Sections 47-901 to 47-920 shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

**Source:** Laws 2015, LB598, § 1; Laws 2016, LB1094, § 28; Laws 2017, LB539, § 1.

**47-902 Legislative intent.**

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;

(b) Assist in improving operations of the department and the Nebraska correctional system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and

(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of the Nebraska Correctional System Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

**Source:** Laws 2015, LB598, § 2.

**47-903 Terms, defined.**

For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

(1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;

(2) Department means the Department of Correctional Services;

(3) Director means the Director of Correctional Services;

(4) Division of Parole Supervision means the division created pursuant to section 83-1,100;

(5) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;

(6) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;

(7) Management means supervision of subordinate employees;

(8) Misfeasance means the improper performance of some act that a person may lawfully do;

(9) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;

(10) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;

(11) Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and

(12) Record means any recording in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and includes, but is not limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

**Source:** Laws 2015, LB598, § 3; Laws 2016, LB1094, § 29; Laws 2018, LB841, § 10.

**47-904 Office of Inspector General of the Nebraska Correctional System; created; Inspector General; appointment; term; qualifications; employees; removal.**

(1) The office of Inspector General of the Nebraska Correctional System is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska correctional system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department shall be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

(3) The Inspector General shall employ such investigators and support staff as he or she deems necessary to carry out the duties of the office within the amount available by appropriation through the office of Public Counsel for the office of Inspector General of the Nebraska Correctional System. The Inspector General shall be subject to the control and supervision of the Public Counsel, except that removal of the Inspector General shall require approval of the chairperson of the Executive Board of the Legislative Council and the chairperson of the Judiciary Committee of the Legislature.

**Source:** Laws 2015, LB598, § 4.

**47-905 Office; duties; 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 the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. The department shall also report all cases of the death or serious injury of an employee when acting in his or her capacity as an employee of the department as soon as reasonably possible after the department learns of such



death or serious injury. The department shall also report all cases when an employee is hospitalized in response to an injury received when acting in his or her capacity as an employee of the department as soon as reasonably possible after the department learns of such hospitalization. For purposes of this subdivision, serious injury means an injury which requires urgent and immediate medical treatment and restricts the injured person's usual activity.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to sections 23-1821 to 23-1823.

(3) 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 the Nebraska Correctional System 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.

**Source:** Laws 2015, LB598, § 5; Laws 2017, LB539, § 2.

**47-906 Office; access to information and personnel; investigation.**

(1) The office shall have access to all information and personnel necessary to perform the duties of the office.

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

**Source:** Laws 2015, LB598, § 6.

**47-907 Complaints to office; form; full investigation; when; notice.**

(1) Complaints to the office may be made in writing. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department or a private agency. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether the office will conduct a full investigation.

(4) When a full investigation is opened on a private agency that contracts with the department, the Inspector General shall give notice of such investigation to the department.

**Source:** Laws 2015, LB598, § 7.

**47-908 Cooperation with office; when required.**

All employees of the department, all employees of the Division of Parole Supervision, and all owners, operators, managers, supervisors, and employees of private agencies shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

**Source:** Laws 2015, LB598, § 8; Laws 2016, LB1094, § 30; Laws 2018, LB841, § 11.

**47-909 Failure to cooperate; effect.**

Failure to cooperate with an investigation by the office may result in discipline or other sanctions.

**Source:** Laws 2015, LB598, § 9.

**47-910 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.

**Source:** Laws 2015, LB598, § 10.

**47-911 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.**

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request by the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

- (a) Production of all records requested;
- (b) A diligent search to ensure that all appropriate records are included; and
- (c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt department programs or services. When advance notice to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division or private agency, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a departmental office, bureau, or division, a department correctional facility, or a private agency to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

- (a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, or department correctional facility to determine that all appropriate records in existence at the time of the request were produced;
- (b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;
- (c) The persons who have had access to the records since they were secured; and
- (d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, or a

department correctional facility to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, or department correctional facility a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

**Source:** Laws 2015, LB598, § 11.

**47-912 Reports of investigations; distribution; redact confidential information; powers of office.**

(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) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to 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 correctional 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 chairperson pursuant to subsection (2) of this section; and

(ii) If a determination is made by the Inspector General with the 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 the Nebraska Correctional System Act.

**Source:** Laws 2015, LB598, § 12; Laws 2017, LB539, § 3.

**47-913 Department; provide direct computer access.**

The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska correctional system, except that the Public Counsel's and Inspector General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.

**Source:** Laws 2015, LB598, § 13.

**47-914 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 private agency. 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 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. 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, violation of statute, or violation of rules and regulations by an employee of the department or a private agency 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 2015, LB598, § 14.

**47-915 Report; director; accept, reject, or request modification; when final; written response; corrected report; appended material.**

(1) Within fifteen days after a report is presented to the director under section 47-914, he or she 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, may consider the director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) Within fifteen days after the report is presented to the director, the report shall be presented to the private agency or other provider of correctional services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within forty-five days after receipt of the report, the private agency or other provider may submit a written response to the office to correct any factual errors 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 private agency or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

**Source:** Laws 2015, LB598, § 15.

**47-916 Report or work product; no court review.**

No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of the Nebraska Correctional System Act.

**Source:** Laws 2015, LB598, § 16.

**47-917 Inspector General; investigation of complaints; priority and selection.**

The Office of Inspector General of the Nebraska Correctional System Act does not require the Inspector General to investigate all complaints. The Inspector General, with input from the Public Counsel, shall prioritize and select investigations and inquiries that further the intent of the act and assist in legislative oversight of the Nebraska correctional system. If the Inspector General determines that he or she will not investigate a complaint, the Inspector General may recommend to the parties alternative means of resolution of the issues in the complaint.

**Source:** Laws 2015, LB598, § 17.

**47-918 Summary of reports and investigations; contents.**

On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

**Source:** Laws 2015, LB598, § 18.

**47-919 Division of Parole Supervision; provide access to records, reports, and documents.**

The Division of Parole Supervision shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records,

reports, and documents maintained in connection with administration of the Nebraska parole system, except that access for the Public Counsel and the Inspector General to a parolee's medical or mental health records shall be subject to the parolee's consent.

**Source:** Laws 2016, LB1094, § 31; Laws 2018, LB841, § 12.

**47-920 Limitations on personnel action.**

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 the Nebraska Correctional System 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, LB539, § 4.

**ARTICLE 10**

**HEALTHY PREGNANCIES FOR INCARCERATED WOMEN ACT**

Section

47-1001. Act, how cited.

47-1002. Legislative findings and declarations.

47-1003. Terms, defined.

47-1004. Detention facility; use of restraints prohibited; exception; detention facility employee; presence in room during labor or childbirth; administrator of detention facility; duties.

47-1005. Civil action authorized.

47-1006. Rules and regulations.

47-1007. Report; contents.

**47-1001 Act, how cited.**

Sections 47-1001 to 47-1007 shall be known and may be cited as the Healthy Pregnancies for Incarcerated Women Act.

**Source:** Laws 2019, LB690, § 1.

**47-1002 Legislative findings and declarations.**

The Legislature finds and declares:

(1) Restraining a pregnant woman can pose undue health risks to the woman and her pregnancy;

(2) The majority of female prisoners and detainees in Nebraska are nonviolent offenders;

(3) Restraining prisoners and detainees increases their potential for physical harm from an accidental trip or fall. The impact of such harm to a pregnant woman can negatively impact her pregnancy;

(4) Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery. Women often need to move

around during labor and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures; and

(5) The Federal Bureau of Prisons, the United States Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Public Health Association all oppose or severely limit the routine shackling of women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman's health and well-being and creates an unnecessary risk to the baby during birth.

**Source:** Laws 2019, LB690, § 2.

**47-1003 Terms, defined.**

For the purposes of the Healthy Pregnancies for Incarcerated Women Act:

(1) Administrator means the Director of Correctional Services, the sheriff or other person charged with administration of a jail, or any other official responsible for the administration of a detention facility;

(2) Detainee includes any adult or juvenile female detained under the immigration laws of the United States at any detention facility;

(3) Detention facility means any:

(a) Facility operated by the Department of Correctional Services;

(b) City or county jail;

(c) Juvenile detention facility or staff secure juvenile facility as such terms are defined in section 83-4,125; or

(d) Any other entity or institution operated by the state, a political subdivision, or a combination of political subdivisions for the careful keeping or rehabilitative needs of prisoners or detainees;

(4) Labor means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(5) Postpartum recovery means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth;

(6) Prisoner means any adult or juvenile incarcerated or detained in any detention facility and includes, but is not limited to, any adult or juvenile who is accused of, convicted of, sentenced for, or adjudicated for violations of criminal law or the terms and conditions of parole, probation, pretrial release, post-release supervision, or a diversionary program; and

(7) Restraints means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

**Source:** Laws 2019, LB690, § 3.



**47-1004 Detention facility; use of restraints prohibited; exception; detention facility employee; presence in room during labor or childbirth; administrator of detention facility; duties.**

(1) A detention facility shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, delivery, or postpartum recovery or during transport to a medical facility or birthing center, unless the administrator makes an individualized determination that there are extraordinary circumstances as described in subsection (2) of this section.

(2) Restraints for an extraordinary circumstance are only permitted if the administrator makes an individualized determination that there is a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee known to be pregnant, the staff of the detention facility or medical facility, other prisoners or detainees, or the public, except that:

(a) If the doctor, nurse, or other health professional treating the prisoner or detainee known to be pregnant requests that restraints not be used, any detention facility employee accompanying the prisoner or detainee shall immediately remove all restraints;

(b) Under no circumstances shall leg or waist restraints be used on the prisoner or detainee known to be pregnant unless the prisoner or detainee presents an immediate and serious risk of harm or a substantial and immediate flight risk; and

(c) Under no circumstances shall any restraints be used on any prisoner or detainee in labor or during childbirth unless the prisoner or detainee presents an immediate and serious risk of harm or a substantial and immediate flight risk.

(3) Upon a prisoner's or detainee's admission to a medical facility or birthing center for labor or childbirth, no detention facility employee shall remain present in the room during labor or childbirth unless specifically requested or approved by medical personnel. A detention facility employee may ask medical personnel to allow such employee to remain present. If a detention facility employee's presence is requested or approved by medical personnel, the employee shall, if practicable, be female.

(4) If a prisoner or detainee known to be pregnant is transported to a medical facility or birthing center and restraints are used, the administrator of the detention facility shall inform the relevant staff at the medical facility or birthing center of the risks and dangers of removing the restraints from the specific prisoner or detainee.

(5) If restraints are used on a prisoner or detainee known to be pregnant pursuant to subsection (2) of this section:

(a) The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and

(b) The administrator shall make written findings within ten days as to the extraordinary circumstances that dictated the use of the restraints. These findings shall be kept on file by the detention facility for at least five years and be made available for public inspection, except that no individually identifying information of the prisoner or detainee shall be made public under this section without the prisoner's or detainee's prior written consent.

**Source:** Laws 2019, LB690, § 4.

**47-1005 Civil action authorized.**

Any prisoner or detainee restrained in violation of the Healthy Pregnancies for Incarcerated Women Act may file a civil action which shall be pursued as a tort claim under the Political Subdivisions Tort Claims Act or the State Tort Claims Act.

**Source:** Laws 2019, LB690, § 5.

**Cross References**

**Political Subdivisions Tort Claims Act**, see section 13-901.

**State Tort Claims Act**, see section 81-8,235.

**47-1006 Rules and regulations.**

(1) On or before October 1, 2019, each detention facility in this state shall adopt and promulgate rules and regulations to carry out the Healthy Pregnancies for Incarcerated Women Act. A detention facility may also adopt and promulgate such rules and regulations developed by the Jail Standards Board or the Nebraska Commission on Law Enforcement and Criminal Justice. Such rules and regulations shall be included in any handbook for prisoners or detainees.

(2) On and after October 1, 2019, a detention facility shall inform each prisoner or detainee of the rules and regulations adopted and promulgated under this section upon admission to the detention facility.

(3) On or before November 1, 2019, a detention facility shall inform any prisoner or detainee in custody of the detention facility, who has not previously been informed, of the rules and regulations adopted and promulgated under this section.

**Source:** Laws 2019, LB690, § 6.

**47-1007 Report; contents.**

On or before June 1, 2020, and each June 1 thereafter, each administrator of a detention facility shall submit a report describing any use of restraints on a pregnant prisoner or detainee in the preceding calendar year. The Director of Correctional Services shall submit such report to the Inspector General of the Nebraska Correctional System. An administrator of a detention facility operated by a political subdivision shall submit such report to the Jail Standards Board. The report shall not contain individually identifying information of any prisoner or detainee. Such reports shall be made available for public inspection.

**Source:** Laws 2019, LB690, § 7.

**LABOR**

**CHAPTER 48**  
**LABOR**

Article.

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**LABOR**

**ARTICLE 1**

**WORKERS' COMPENSATION**

**Part I. COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES**

**Section**

48-101.01. Mental injuries and mental illness; first responder; frontline state employee; legislative findings; evidentiary burden; compensation; when; first responder; annual resilience training; reimbursement; department; duties.

**Part II. ELECTIVE COMPENSATION**

**(a) GENERAL PROVISIONS GOVERNING ELECTION**

48-115. Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.

**(c) SCHEDULE OF COMPENSATION**

48-120. Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

48-120.04. Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.

48-122. Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents; appointment of attorney in fact; bond; filing required.

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48-139. Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; filing of release; form; contents; payment; fees.

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**WORKERS' COMPENSATION**

**§ 48-101.01**

- Section  
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Part I

**COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES**

**48-101.01 Mental injuries and mental illness; first responder; frontline state employee; legislative findings; evidentiary burden; compensation; when; first responder; annual resilience training; reimbursement; department; duties.**

(1) The Legislature finds and declares:

(a) The occupations of first responders are recognized as stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, first responders face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival to protect the communities they serve;

(b) On any given day, first responders can be called on to make life and death decisions, witness a young child dying with the child's grief-stricken family, make a decision that will affect a community member for the rest of such person's life, or be exposed to a myriad of communicable diseases and known carcinogens;

(c) On any given day, first responders protect high-risk individuals from themselves and protect the community from such individuals;

(d) First responders are constantly at significant risk of bodily harm or physical assault while they perform their duties;

(e) Constant, cumulative exposure to horrific events make first responders uniquely susceptible to the emotional and behavioral impacts of job-related stressors;

(f) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide; and

(g) It is imperative for society to recognize occupational injuries related to post-traumatic stress and to promptly seek diagnosis and treatment without stigma. This includes recognizing that mental injury and mental illness as a result of trauma is not disordered, but is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.

(2) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder or frontline state employee if such first responder or frontline state employee:

(a) Establishes that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, through a mental health professional, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(3) The employee bears the burden of establishing the matters described in subsection (2) of this section by a preponderance of the evidence.

(4) Until January 1, 2028, a first responder may establish prima facie evidence of a personal injury that is a mental injury or mental illness if the first responder:

(a) Presents evidence that the first responder underwent a mental health examination by a mental health professional upon entry into such service or subsequent to such entry and before the onset of the mental injury or mental illness and such examination did not reveal the mental injury or mental illness for which the first responder seeks compensation;

(b) Presents testimony or an affidavit from a mental health professional stating the first responder suffers from a mental injury or mental illness caused by one or more events or series of events which cumulatively produced the mental injury or mental illness which brought about the need for medical attention and the interruption of employment;

(c) Presents evidence that such events or series of events arose out of and in the course of the first responder's employment; and

(d) Presents evidence that, prior to the employment conditions which caused the mental injury or mental illness, the first responder had participated in resilience training and updated the training at least annually thereafter.

(5) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(6)(a) The Department of Health and Human Services shall reimburse a first responder for the cost of annual resilience training not reimbursed by the first responder's employer. The department shall pay reimbursement at a rate determined by the Critical Incident Stress Management Program under section 71-7104. Reimbursement shall be subject to the annual limit set by such program under section 71-7104.

(b) To obtain reimbursement under this subsection, a first responder shall submit an application to the Department of Health and Human Services on a form and in a manner prescribed by the department.

(7) The Department of Health and Human Services shall maintain and annually update records of first responders who have completed annual resilience training.

(8) For purposes of this section:

(a) First responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer 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;

(b) Frontline state employee means an employee of the Department of Correctional Services or the Department of Health and Human Services whose duties involve regular and direct interaction with high-risk individuals;

(c) High-risk individual means an individual in state custody for whom violent or physically intimidating behavior is common, including, but not limited to, a committed offender as defined in section 83-170, a patient at a regional center as defined in section 71-911, and a juvenile committed to the Youth Rehabilitation and Treatment Center-Kearney or the Youth Rehabilitation and Treatment Center-Geneva;

(d) 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 in similar provisions of the Psychology Interjurisdictional Compact; or

(iii) A person licensed as an independent mental health practitioner under the Mental Health Practice Act;

(e) Resilience training means training that meets the guidelines established by the Critical Incident Stress Management Program under section 71-7104 and that teaches how to adapt to, manage, and recover from adversity, trauma, tragedy, threats, or significant sources of stress; and

(f) State custody means under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency.

(9) All other provisions of the Nebraska Workers' Compensation Act apply to this section.

**Source:** Laws 2010, LB780, § 1; Laws 2012, LB646, § 2; Laws 2017, LB444, § 2; Laws 2020, LB963, § 1.  
Operative date July 1, 2021.

## 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.

## Part II

## ELECTIVE COMPENSATION

## (a) GENERAL PROVISIONS GOVERNING ELECTION

**48-115 Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.**

The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state;

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or



suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;

(5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act;

(6) Volunteer ambulance drivers and attendants and emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer

ambulance drivers or attendants or emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;

(9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.

An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer

organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If such an executive officer has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the executive officer is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer.

It is the intent of the Legislature that the changes made to this subdivision by Laws 2002, LB 417, shall apply to policies of insurance against liability arising under the act with an effective date on or after January 1, 2003, but shall not apply to any such policy with an effective date prior to January 1, 2003;

(10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by such person and the termination is filed with the insurer or until the insurer ceases to provide coverage for the business, whichever occurs first. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If any such person who is actually engaged in the business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such person contains an exclusion of coverage if such person is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

(11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation

Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

**Source:** Laws 1913, c. 198, § 15, p. 583; R.S.1913, § 3656; Laws 1917, c. 85, § 4, p. 201; Laws 1921, c. 122, § 1, p. 519; C.S.1922, § 3038; Laws 1927, c. 39, § 1, p. 169; C.S.1929, § 48-115; Laws 1933, c. 90, § 1, p. 362; Laws 1941, c. 93, § 1, p. 370; C.S.Supp.,1941, § 48-115; R.S.1943, § 48-115; Laws 1959, c. 222, § 1, p. 782; Laws 1961, c. 233, § 1, p. 689; Laws 1963, c. 282, § 1, p. 841; Laws 1967, c. 289, § 1, p. 788; Laws 1967, c. 291, § 1, p. 793; Laws 1969, c. 391, § 1, p. 1373; Laws 1973, LB 25, § 1; Laws 1973, LB 150, § 1; Laws 1973, LB 239, § 2; Laws 1975, LB 186, § 1; Laws 1976, LB 782, § 14; Laws 1977, LB 199, § 1; Laws 1981, LB 20, § 1; Laws 1983, LB 185, § 1; Laws 1984, LB 776, § 1; Laws 1986, LB 528, § 6; Laws 1986, LB 811, § 33; Laws 1987, LB 353, § 1; Laws 1993, LB 121, § 282; Laws 1994, LB 884, § 63; Laws 1996, LB 43, § 8; Laws 1997, LB 138, § 38; Laws 1997, LB 474, § 2; Laws 1998, LB 1010, § 1; Laws 1999, LB 216, § 1; Laws 2002, LB 417, § 2; Laws 2003, LB 332, § 1; Laws 2005, LB 238, § 1; Laws 2010, LB579, § 14; Laws 2020, LB1002, § 42.

Operative date November 14, 2020.

**Cross References**

Professional Employer Organization Registration Act, see section 48-2701.

(c) SCHEDULE OF COMPENSATION

**48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.**

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corpo-

ration, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section, including any finance charge or late penalty.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a

physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensa-

tion claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensa-

ability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

**Source:** Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51; Laws 2011, LB152, § 1; Laws 2015, LB480, § 2.

**48-120.04 Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.**

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For inpatient trauma discharges on or after January 1, 2012, the trauma services inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(4) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low-income patient costs and related capital;



(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(d) Trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability;

(e) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent except for inpatient hospital trauma services; and

(f) Workers' Compensation Trauma Factor for inpatient hospital trauma services means the Current Medicare Factor for each hospital multiplied by one hundred sixty percent.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section. Claims for inpatient trauma services prior to January 1, 2012, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. Claims for inpatient trauma services on or after January 1, 2012, for Diagnostic Related Groups subject to the Diagnostic Related Group inpatient hospital fee schedule shall be reimbursed under the trauma services inpatient hospital fee schedule established in this section, except as otherwise provided in subdivision (1)(d) of section 48-120.

(6) The trauma services inpatient hospital fee schedule shall be established by the following methodology:

(a) The trauma services reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Trauma Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the trauma services reimbursement amount calculated in subdivision (6)(a) of this section multiplied by one and one-quarter;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the trauma services reimbursement amount calculated in subdivision (6)(a) of this section plus sixty-five percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the

trauma services reimbursement amount calculated in subdivision (6)(a) of this section.

(7) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section.

(8) For charges for all other stays or services that are not reimbursed under the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(9) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(10) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(11) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group, the number of claims for each Diagnostic Related Group that included trauma services, the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group, and the number of times billed charges exceeded the Stop-Loss Threshold amount for each trauma service.

(12) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and

shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (10) of this section.

**Source:** Laws 2007, LB588, § 2; Laws 2009, LB630, § 2; Laws 2010, LB872, § 1; Laws 2011, LB152, § 2.

**48-122 Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents; appointment of attorney in fact; bond; filing required.**

(1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding eleven thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative. Beginning in 2023, the Nebraska Workers' Compensation Court shall annually adjust the dollar limitation in this subsection. The adjusted limitation shall be equal to the then current limitation adjusted by the greater of one percent or the percentage change, for the preceding year, in the Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics. Any adjustment shall be effective on July 1. The adjustment shall not exceed two and three-quarters percent per annum. If the amount so adjusted is not a multiple of one hundred dollars, the amount shall be rounded to the nearest multiple of one hundred dollars.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this section, the consular officer of the nation of which the employee, whose injury results in

death, is a citizen shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee.

(ii) At any time prior to the final settlement, a nonresident alien dependent may file with the Nebraska Workers' Compensation Court a power of attorney designating any suitable person residing in this state to act as attorney in fact in proceedings under the Nebraska Workers' Compensation Act. If the compensation court determines that the interests of the nonresident alien dependent will be better served by such person than by the consular officer, the compensation court shall appoint such person to act as attorney in fact in such proceedings. In making such determination the court shall consider, among other things, whether a consular officer's jurisdiction includes Nebraska and the responsiveness of the consular officer to attempts made by an attorney representing the employee to engage such consular officer in the proceedings.

(b) Such consular officer or appointed person shall have in behalf of such nonresident alien dependents the exclusive right to institute proceedings for, adjust, and settle all claims for compensation provided by the Nebraska Workers' Compensation Act and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

(c) A person appointed under subdivision (5)(a)(ii) of this section shall furnish a bond satisfactory to the compensation court conditioned upon the proper application of any money received as compensation under the Nebraska Workers' Compensation Act. Before the bond is discharged, such appointed person shall file with the compensation court a verified account of receipts and disbursements of such money.

(d) For purposes of this section, consular officer means a consul general, vice consul general, or vice consul or the representative of any such official residing within the State of Nebraska.

(6) The changes made to this section by Laws 2019, LB418, apply to cases under the Nebraska Workers' Compensation Act that are pending on September 1, 2019, and to cases filed on or after such date.

**Source:** Laws 1913, c. 198, § 22, p. 588; R.S.1913, § 3663; Laws 1917, c. 85, § 8, p. 205; Laws 1919, c. 91, § 3, p. 232; C.S.1922, § 3045; C.S.1929, § 48-122; Laws 1935, c. 57, § 40, p. 209; C.S.Supp.,1941, § 48-122; R.S.1943, § 48-122; Laws 1945, c. 112, § 2, p. 361; Laws 1949, c. 160, § 2, p. 406; Laws 1951, c. 152, § 2, p. 620; Laws 1953, c. 162, § 2, p. 509; Laws 1955, c. 186, § 2, p. 530; Laws 1957, c. 203, § 2, p. 713; Laws 1957, c. 204, § 2, p. 719; Laws 1959, c. 223, § 2, p. 787; Laws 1963, c. 284, § 2, p. 850; Laws 1963, c. 285, § 2, p. 858; Laws 1965, c. 279, § 2, p. 803; Laws 1967, c. 288, § 2, p. 786; Laws 1969, c. 393, § 2, p. 1381; Laws 1971, LB 320, § 2; Laws 1973, LB 193, § 2; Laws 1974, LB 710, § 2; Laws 1975, LB 198, § 2; Laws 1977, LB 275, § 2; Laws 1978, LB 446, § 2; Laws 1979, LB 114, § 2; Laws 1981, LB 234, § 1; Laws 1983, LB 158, § 2; Laws 1985, LB 608, § 2; Laws 1986, LB 811, § 39; Laws 1997, LB 853, § 1; Laws 2012, LB738, § 1; Laws 2019, LB418, § 1; Laws 2020, LB963, § 2.

Operative date July 1, 2021.

**48-125 Compensation; method of payment; payment by prepaid card; agreement; disclosure of fees or charges; election to rescind agreement; delay; appeal; attorney's fees; interest.**

(1) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death or by a method of payment as provided in subsection (2) of this section. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149 or subsection (2) of this section.

(2)(a) After an injury or death subject to the Nebraska Workers' Compensation Act, the employer, workers' compensation insurer, or risk management pool and the employee, the other person entitled to compensation, or a legal representative acting on behalf of such employee or other person entitled to compensation may enter into a written or electronic agreement that periodic or lump-sum payments to the employee or other person entitled to compensation may be made by check or by direct deposit, prepaid card, or similar electronic payment system.

(b) Payments made by direct deposit, prepaid card, or similar electronic payment system pursuant to this subsection shall not be subject to attachment or garnishment or held liable in any way for any debts, except as provided in section 48-149; and an agreement pursuant to this subsection shall include notice of this fact. If an amount is withheld pursuant to section 48-149, sufficient information to identify the jurisdiction, the case number or similar identifying information, and the amount withheld shall be provided to the employee or other person entitled to compensation or his or her legal representative at or near the time of withholding.

(c) Prior to entering into an agreement pursuant to this subsection for payment by prepaid card, the employer, workers' compensation insurer, or risk management pool shall provide to the employee or other person entitled to compensation information regarding the locations where such card may be used by the employee or other person.

(d) Pursuant to an agreement under this subsection, compensation may be transferred by electronic funds transfer or other electronic means to the trust account of an attorney representing the employee or other person entitled to compensation, for the benefit of such employee or other person. The payment or transfer shall include or be accompanied by information sufficient to identify the nature of the payment being made, including the employer, workers' compensation insurer, or risk management pool and the employee or other person entitled to compensation.

(e) If an employer, workers' compensation insurer, or risk management pool imposes any fees or other charges relating to payment by direct deposit, prepaid card, or a similar electronic payment system, prior to entering into an agreement pursuant to this subsection the employer, workers' compensation insurer, or risk management pool shall disclose such fees or charges to the employee or other person entitled to compensation.

(f) Any payment or transfer made pursuant to this subsection by direct deposit, prepaid card, or similar electronic payment system shall be in the full amount of the lump-sum or periodic payment awarded or paid pursuant to section 48-121 to the employee or other person entitled to compensation.

(g) A prepaid card offered by the employer, workers' compensation insurer, or risk management pool shall:

(i) Allow the employee or other person entitled to compensation to apply, initiate, transfer, and load payments with no charge by the employer, workers' compensation insurer, or risk management pool;

(ii) For the initial prepaid card, be distributed or delivered to the employee or other person entitled to compensation with no charge by the employer, workers' compensation insurer, or risk management pool; and

(iii) Provide the employee or other person entitled to compensation, with respect to each payment made to the prepaid card in accordance with this subsection, at least one method of accessing the full payment without fees.

(h) An employee, another person entitled to compensation, or a legal representative acting on behalf of such employee or other person entitled to compensation may elect at any time to rescind the agreement under this subsection regarding the method of payment by providing written or electronic notice of such rescission to the employer, workers' compensation insurer, or risk management pool that is a party to such agreement. If such election is made, the employer, workers' compensation insurer, or risk management pool shall change the method of payment to the method of payment of wages of the employee at the time of the injury or death under subsection (1) of this section as soon as practicable after receiving the information necessary to do so and in a manner that allows the employer, workers' compensation insurer, or risk management pool to comply with the requirements of subsection (3) of this section without making a delinquent payment. The employer, workers' compensation insurer, or risk management pool is not required to rescind any payment transaction already made or made to comply with subsection (3) of this section.

(i) An employer, a workers' compensation insurer, or a risk management pool or an agent of any such entity shall not engage in unfair, deceptive, or abusive practices in relation to the method of payment. No employer, workers' compensation insurer, risk management pool, or agent of any such entity shall discharge, penalize, or in any other manner discriminate against any employee or other person entitled to compensation because such employee or other person has not consented to receive payments by check or by direct deposit, prepaid card, or a similar electronic payment system.

(j) An employer, workers' compensation insurer, or risk management pool that elects to make payment using a prepaid card shall comply with the requirements of 12 C.F.R. part 1005, as such part existed on April 1, 2018.

(3) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(4)(a) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation

for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

(b) If the employer files an appeal from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the Court of Appeals or Supreme Court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(c) If the employee files an appeal from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an appeal from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the Court of Appeals or Supreme Court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(d) A reasonable attorney's fee allowed pursuant to this subsection shall not affect or diminish the amount of the award.

(5) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer. For any injury occurring prior to August 30, 2015, the interest rate shall be equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. For any injury occurring on or after August 30, 2015, the interest rate shall be equal to six percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

(6) For purposes of this section:

(a) Direct deposit means the transfer of payments into an account of a financial institution chosen by the employee or other person entitled to compensation; and

(b) Prepaid card means a prepaid debit card that provides access to an account with a financial institution established directly or indirectly by the employer, workers' compensation insurer, or risk management pool to which payments are transferred.

**Source:** Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws

1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB 360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3; Laws 2011, LB151, § 1; Laws 2015, LB480, § 3; Laws 2018, LB957, § 1.

**48-126.01 Wages or compensation rate; basis of computation.**

(1)(a) In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, or any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which military forces, law enforcement reserve force, or emergency management agency, organization, or team is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, agency, organization, or team, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

(b) If a member or person under subdivision (1)(a) of this section is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01.

(c) If the wages received for the performance of duties as a member of such military forces, reserve force, agency, organization, or team exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, agency, organization, or team.

(2) In determining the compensation rate to be paid any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation or any member of a volunteer emergency medical service, which fire department or emergency medical service is organized under the laws of the State of Nebraska, for injuries resulting in disability or death received in the performance of his or her duties as a member of such fire department or emergency medical service, it shall be deemed and assumed that his or her wages are in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01 or the wages received by such member from his or her regular employment, whichever is greater. Any member of such volunteer fire department or volunteer emergency medical service shall not lose his or her volunteer status under the Nebraska Workers' Compensation Act if such volunteer receives reimbursement for expenses, reasonable benefits, or a nominal fee, a nominal per call fee, a nominal per shift fee, or combination thereof. It shall be conclusively presumed that a fee is



nominal if the fee does not exceed twenty percent of the amount that otherwise would be required to hire a permanent employee for the same services.

**Source:** Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 171; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S.Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(2), p. 513; Laws 1955, c. 186, § 3, p. 532; Laws 1959, c. 224, § 1, p. 790; Laws 1961, c. 233, § 2, p. 691; Laws 1967, c. 289, § 2, p. 790; Laws 1969, c. 394, § 1, p. 1384; Laws 1973, LB 239, § 3; Laws 1973, LB 25, § 2; Laws 1976, LB 782, § 15; Laws 1986, LB 528, § 7; Laws 1996, LB 43, § 9; Laws 1997, LB 138, § 39; Laws 1999, LB 216, § 7; Laws 2014, LB961, § 10.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

**48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; filing of release; form; contents; payment; fees.**

(1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability under the Nebraska Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the

settlement which are disputed and for which compensability has been denied by the employer, and such other matters as may be reasonably required by the compensation court. The application shall also include a statement that the parties have considered the interests of medicare and have taken reasonable steps to protect any interests of medicare. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may, on its own motion, and shall, on a motion by one of the parties, hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b)(i) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same.

(ii) If the expenses for medical, surgical, or hospital services provided to the employee are not paid by the employer, or if any person, other than medicare, who has made any payment to the supplier of medical, surgical, or hospital services provided to the employee, is not reimbursed by the employer, it shall be conclusively presumed that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses, as set forth in the application, is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents, if the employee's attorney elects to affirm and does affirm in the application that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances.

(iii) If the employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed, and if the employee's attorney elects to affirm and does affirm in the application that the parties' agreement relating to consideration of medicare's interests set forth in such lump-sum settlement is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, it shall be conclusively presumed that the parties' agreement relating to consideration of medicare's interests set forth in the application is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents.

(iv) If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. An order approving an application under this subsection shall, in any case in which the employee is represented by counsel and in which the application contains a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the settlement which are disputed and for which compensability has been denied by the employer, provide that the employer is not liable for such expenses. Upon paying the amount approved by the compensation court, the employer shall be discharged from further liability on account of the injury or death, other than liability for

the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties.

(d) An exclusion from coverage in any health, accident, or other insurance policy covering an employee which provides that coverage under such insurance policy does not apply if such employee is entitled to workers' compensation coverage is void as to such employee if his or her employer is not liable for medical, surgical, or hospital expenses incurred for treatment of an injury that will remain unpaid as part of the settlement pursuant to an order entered under subdivision (2)(c) of this section.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) Upon the entry of an order of dismissal with prejudice, a release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release and upon the entry of an order of dismissal with prejudice, as to all rights waived in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release.

(5) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be

remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

**Source:** Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-139; Laws 1951, c. 153, § 1, p. 623; Laws 1975, LB 187, § 4; Laws 1977, LB 126, § 3; Laws 1978, LB 649, § 3; Laws 1986, LB 811, § 57; Laws 1993, LB 757, § 10; Laws 2002, LB 417, § 3; Laws 2009, LB630, § 6; Laws 2014, LB961, § 11; Laws 2018, LB953, § 1.

**48-145 Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.**

To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. Notwithstanding subdivision (1)(d) of this section, a professional employer organization shall not be eligible to self-insure its workers' compensation liability. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compen-

sation court and specifically delineated in the agreement or document. The trustee of any trust created to satisfy the requirements of this section may invest the trust assets in the same manner authorized under subdivisions (1)(a) through (i) of section 30-3209 for corporate trustees holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, or governmental or political subdivisions, except that the trustee shall not invest trust assets into stocks, bonds, or other obligations of the trustor. If, as a result of such investments, the value of the trust assets is reduced below the acceptable trust amount required by the compensation court, then the trustor shall deposit additional trust assets to account for the shortfall.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of

the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

**Source:** Laws 1913, c. 198, § 46, p. 599; R.S.1913, § 3687; Laws 1917, c. 85, § 21, p. 215; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3069; C.S.1929, § 48-146; Laws 1935, c. 57, § 31, p. 202; C.S.Supp.,1941, § 48-146; R.S.1943, § 48-145; Laws 1957, c. 205, § 1, p. 723; Laws 1963, c. 286, § 1, p. 860; Laws 1971, LB 572, § 8; Laws 1986, LB 811, § 67; Laws 1988, LB 1146, § 1; Laws 1997, LB 474, § 4; Laws 1999, LB 216, § 9; Laws 2000, LB 1221, § 8; Laws 2005, LB 13, § 8; Laws 2005, LB 238, § 10; Laws 2010, LB579, § 16; Laws 2015, LB480, § 4.

**Cross References**

**Intergovernmental Risk Management Act**, see section 44-4301.

**48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.**

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to

appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the compensation court pursuant to subsection (2) of this section shall be in accordance with sections 48-182 and 48-185.

**Source:** Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9; Laws 2011, LB151, § 2.

### Part III

## MISCELLANEOUS PROVISIONS

### **48-148.01 Denial of compensation; false representation.**

No compensation shall be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment: (1) The employee knowingly and willfully made a false representation as to his or her physical or medical condition by acknowledging in writing that he or she is able to perform the essential functions of the job with or without reasonable accommodation based upon the employer's written job description; (2) the employer relied upon the false representation and the reliance was a substantial factor in the hiring; and (3) a causal connection existed between the false representation and the injury.

**Source:** Laws 2015, LB480, § 1.

### **48-148.02 Debt collection; limitations; notice; contents; delivery; Attorney General; ensure compliance; stay of lawsuits; effect on statute of limitations.**

(1) After receipt of the notices provided for in this section, no debt collection shall be undertaken by a provider of services, supplier of services, collection agency, collector, or creditor attempting to collect a debt incurred against an employee or his or her spouse for treatment of a work-related injury while the matter is pending in the compensation court until final adjudication of the case regarding such debt.

(2) Notice under this section shall be made in writing and provided to each provider of services, supplier of services, collection agency, collector, or creditor as described in subsection (1) of this section. Notice shall not be imputed to any party from the service of notice upon another party.

(3) The initial notice shall contain the provider's name, employee's name, date of the injury, and a description of the injury, together with the filing date and case number pending in the compensation court. Within thirty days after the initial notice, an additional notice shall be provided specifically identifying the debt upon which collection should be stayed, unless identification was made in the initial notice. Notice shall be void if it fails to provide the proper information or is not provided within the required timeframes, or until proper notice is provided.

(4) Notice shall be made by personally delivering the notice to the person on whom it is to be served or by sending it by first-class mail addressed to the

person or business entity on whom it is to be served at his or her residence or the principal office address of a business entity, or by a method otherwise agreed to between the parties. Each provider, supplier, collection agency, collector, or creditor shall not be deemed to be notified under this section unless receipt of the notice can be demonstrated.

(5) If collection efforts continue after both notices are received by the entity seeking to collect, the notices may be forwarded to the Attorney General requesting his or her assistance in gaining compliance with this act. The entity seeking to collect shall be copied on such notification to the Attorney General, and shall be given a reasonable period of time to respond to the notice and to cure any noncompliance. If noncompliance continues, the Attorney General may take such reasonable steps as is necessary to ensure compliance with this section. No private cause of action shall exist under this section. A violation of this section shall not be considered a violation of any other state or federal law.

(6) After notice is provided, collection lawsuits may be stayed, where applicable, by the plaintiff in a pending collection case, until final adjudication by the compensation court of the matter of the debt alleged to be subject to this section.

(7) The statute of limitations on the collection of such debt shall be tolled during the pendency of the compensation case from the date the case was filed with the compensation court.

(8) This section shall have no applicability outside of the Nebraska Workers' Compensation Act and shall not apply to any other cause of action under state or federal law.

**Source:** Laws 2019, LB418, § 8.

#### Part IV

### NEBRASKA WORKERS' COMPENSATION COURT

#### **48-153 Judges; number; term; qualifications; continuance in office; prohibition on holding other office or pursuing other occupation.**

The Nebraska Workers' Compensation Court shall consist of seven judges. Judges holding office on August 30, 1981, shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on the first Thursday after the first Tuesday in January immediately following the first general election at which they are retained in office after August 30, 1981. Judge of the Nebraska Workers' Compensation Court shall include any person appointed to the office of judge of the Nebraska Workmen's Compensation Court prior to July 17, 1986, pursuant to Article V, section 21, of the Nebraska Constitution. Any person serving as a judge of the Nebraska Workmen's Compensation Court immediately prior to July 17, 1986, shall be a judge of the Nebraska Workers' Compensation Court. The right of judges of the compensation court to continue in office shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on the first Thursday after the first Tuesday in January immediately following their retention at such election. In case of a vacancy occurring in the Nebraska Workers' Compensation Court, the same shall be filled in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections



24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation, or removal for cause. No judge of the compensation court shall, during his or her tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his or her duties as such judge, or serve on or under any committee of any political party.

**Source:** Laws 1935, c. 57, § 2, p. 188; C.S.Supp.,1941, § 48-163; R.S. 1943, § 48-153; Laws 1945, c. 113, § 1, p. 363; Laws 1963, c. 288, § 1, p. 865; Laws 1965, c. 280, § 2, p. 806; Laws 1967, c. 292, § 2, p. 798; Laws 1975, LB 187, § 10; Laws 1978, LB 649, § 4; Laws 1979, LB 237, § 5; Laws 1981, LB 111, § 4; Laws 1983, LB 18, § 3; Laws 1986, LB 811, § 81; Laws 1988, LB 868, § 2; Laws 2011, LB151, § 3.

**48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.**

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

**Source:** Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c. 225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14; Laws 2011, LB151, § 4.

**48-156 Judges; quorum; powers.**

A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court, except that a majority vote of all the judges shall be required to adopt rules and regulations.

**Source:** Laws 1935, c. 57, § 5, p. 190; C.S.Supp.,1941, § 48-166; R.S. 1943, § 48-156; Laws 1945, c. 113, § 3, p. 364; Laws 1965, c. 280, § 3, p. 807; Laws 1983, LB 18, § 4; Laws 1986, LB 811, § 86; Laws 1992, LB 360, § 16; Laws 1999, LB 216, § 13; Laws 2011, LB151, § 5.

**48-162.03 Compensation court; motions; powers.**

(1) The Nebraska Workers' Compensation Court or any judge thereof may rule upon any motion addressed to the court by any party to a suit or proceeding, including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial. Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

(2) Parties to a dispute which might be the subject of an action under the Nebraska Workers' Compensation Act may file a motion for an order regarding the dispute without first filing a petition.

(3) If notice of a motion is required, the notice shall be in writing and shall state: (a) The names of the parties to the action, proceeding, or dispute in which it is to be made; (b) the name of the judge before whom it is to be made; (c) the time and place of hearing; and (d) the nature and terms of the order or orders to be applied for. Notice shall be served a reasonable time before the hearing as provided in the rules of the compensation court.

**Source:** Laws 1997, LB 128, § 5; Laws 2013, LB141, § 1.

**48-166 Compensation court; annual report; contents.**

On or before January 1 of each year, the Nebraska Workers' Compensation Court shall submit electronically an annual report to the Clerk of the Legislature for the past fiscal year which shall include (1) pertinent information regarding settlements and awards made by the compensation court, (2) the causes of the accidents leading to the injuries for which the settlements and awards were made, (3) a statement of the total expense of the compensation court, (4) any other matters which the compensation court deems proper to include, and (5) any recommendations it may desire to make.

**Source:** Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-166; Laws 1945, c. 113, § 6, p. 366; Laws 1955, c. 231, § 7, p. 720; Laws 1986, LB 811, § 99; Laws 1999, LB 216, § 16; Laws 2013, LB222, § 16.

**48-167 Compensation court; record.**

The Nebraska Workers' Compensation Court shall keep and maintain a full and true record of all proceedings, documents, or papers ordered filed, rules and regulations, and decisions or orders.

**Source:** Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-167; Laws 1945, c. 113, § 7, p. 366; Laws 1986, LB 811, § 100; Laws 2011, LB151, § 6.

**48-170 Compensation court; orders; awards; when binding.**

Every order and award of the Nebraska Workers' Compensation Court shall be binding upon each party at interest unless an appeal has been filed with the compensation court within thirty days after the date of entry of the order or award.

**Source:** Laws 1917, c. 85, § 29, p. 222; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941,

§ 48-157; R.S.1943, § 48-170; Laws 1967, c. 294, § 1, p. 800; Laws 1975, LB 187, § 12; Laws 1986, LB 811, § 103; Laws 1992, LB 360, § 19; Laws 1999, LB 43, § 24; Laws 2011, LB151, § 7.

**48-175.01 Nonresident employer; service of process; manner of service; continuance; record.**

(1)(a) The performance of work in the State of Nebraska (i) by an employer, who is a nonresident of the State of Nebraska, (ii) by any resident employer who becomes a nonresident of this state after the occurrence of an injury to an employee, or (iii) by any agent of such an employer shall be deemed an appointment by such employer of the clerk of the Nebraska Workers' Compensation Court as a true and lawful attorney and agent upon whom may be served all legal processes in any action or proceeding against him or her, arising out of or under the provisions of the Nebraska Workers' Compensation Act, and such performance of work shall be a signification of the employer's agreement that any such process, which is so served in any action against him or her, shall be of the same legal force and validity as if served upon him or her personally within this state. The appointment of agent, thus made, shall not be revocable by death but shall continue and be binding upon the executor or administrator of such employer.

(b) For purposes of this section, performance of work shall include, but not be limited to, situations in which (i) the injury or injury resulting in death occurred within this state, (ii) the employment was principally localized within this state, or (iii) the contract of hire was made within this state.

(2) Service of such process, as referred to in subsection (1) of this section, shall be made by serving a copy thereof upon the clerk of the Nebraska Workers' Compensation Court, personally in his or her office or upon someone who, previous to such service, has been designated in writing by the clerk of the Nebraska Workers' Compensation Court as the person or one of the persons with whom such copy may be left for such service upon the clerk of the Nebraska Workers' Compensation Court, and such service shall be sufficient service upon the employer. In making such service, a copy of the petition and a copy of the process shall, within ten days after the date of service, be sent by the clerk of the Nebraska Workers' Compensation Court, or such person acting for him or her in his or her office, to the defendant by registered or certified mail addressed to the defendant's last-known address, and the defendant's return receipt and affidavit of the clerk of the Nebraska Workers' Compensation Court, or such person in his or her office acting for him or her, of compliance therewith shall be appended to such petition and filed in the office of the clerk of the Nebraska Workers' Compensation Court. The date of the mailing and the date of the receipt of the return card aforesaid shall be properly endorsed on such petition and filed by the clerk of the Nebraska Workers' Compensation Court, or someone acting for him or her.

(3) The Nebraska Workers' Compensation Court shall, on its own motion, order such continuance of answer day and trial date, as may to the compensation court seem necessary to afford the defendant reasonable opportunity to plead and to defend. No such continuance shall be for more than ninety days except for good cause shown.

(4) It shall be the duty of the clerk of the Nebraska Workers' Compensation Court to keep a record of all processes so served, in accordance with subsec-

tions (1) and (2) of this section, which record shall show the date of such service, and to so arrange and index such record as to make the same readily accessible and convenient for inspection.

**Source:** Laws 1957, c. 202, § 2, p. 708; Laws 1973, LB 150, § 2; Laws 1986, LB 811, § 108; Laws 2011, LB151, § 8.

**48-177 Hearing; judge; place; dismissal; procedure; manner of conducting hearings.**

(1) At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state.

(2) Any such cause may be dismissed without prejudice to a future action (a) by the plaintiff, if represented by legal counsel, before the final submission of the case to the compensation court or (b) by the compensation court upon a stipulation of the parties that a dispute between the parties no longer exists.

(3) Notwithstanding subsection (1) of this section, all nonevidentiary hearings, and any evidentiary hearings approved by the compensation court and by stipulation of the parties, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the state as ordered by the court and in a manner that ensures the preservation of an accurate record. Hearings conducted in this manner shall be consistent with the public's access to the courts.

**Source:** Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29; Laws 2011, LB151, § 9.

**48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.**

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may

order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

**Source:** Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14; Laws 2011, LB151, § 10.

**48-179 Repealed. Laws 2011, LB 151, § 20.**

**48-180 Findings, order, award, or judgment; modification; effect.**

The Nebraska Workers' Compensation Court may, on its own motion or on the motion of any party, modify or change its findings, order, award, or judgment at any time before appeal and within fourteen days after the date of such findings, order, award, or judgment. The time for appeal shall not be lengthened because of the modification or change unless the correction substantially changes the result of the award.

**Source:** Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-180; Laws 1986, LB 811, § 113; Laws 1992, LB 360, § 22; Laws 2011, LB151, § 11.

**48-181 Repealed. Laws 2011, LB 7, § 1.**

**48-182 Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.**

In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court, such party may, within thirty days thereafter, file with the compensation court a notice of appeal and at the same time the notice of appeal is filed, file with the compensation court a praecipe for a bill of exceptions. Within seven weeks from the date the notice of appeal is filed, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court at the hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

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 except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within seven weeks from the date the notice of appeal is filed, the Supreme Court may, on the motion of

any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order.

**Source:** Laws 1935, c. 57, §§ 13, 15, pp. 194, 195; C.S.Supp., 1941, §§ 48-174, 48-176; R.S. 1943, § 48-182; Laws 1967, c. 294, § 2, p. 801; Laws 1971, LB 252, § 1; Laws 1973, LB 192, § 1; Laws 1975, LB 187, § 13; Laws 1986, LB 811, § 114; Laws 1986, LB 529, § 51; Laws 1991, LB 732, § 111; Laws 1992, LB 360, § 23; Laws 2011, LB151, § 12; Laws 2013, LB141, § 2.

**48-185 Appeal; procedure; judgment by Nebraska Workers' Compensation Court; effect; grounds for modification or reversal.**

Any appeal from the judgment of the Nebraska Workers' Compensation Court shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the opinion of the Supreme Court or decision of the Court of Appeals to the compensation court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the compensation court shall be by filing in the office of the clerk of the Nebraska Workers' Compensation Court, within thirty days after the entry of such judgment, decree, or final order, a notice of appeal signed by the appellant or his or her attorney of record. No motion for a new trial shall be filed. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workers' Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workers' Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within thirty days after the date of filing of notice of appeal, the clerk of the Nebraska Workers' Compensation 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 transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither the form nor the substance of such transcript shall affect the jurisdiction of the appellate court. Such appeal shall be perfected within thirty days after the entry of judgment by the compensation court, the cause shall be advanced for argument before the appellate court, and the appellate court shall render its judgment and write an opinion, if any, in such cases as speedily as possible. The judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers, (2) the

judgment, order, or award was procured by fraud, (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the compensation court do not support the order or award.

**Source:** Laws 1935, c. 57, § 13, p. 195; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-185; Laws 1953, c. 165, § 1, p. 517; Laws 1957, c. 207, § 1, p. 726; Laws 1975, LB 187, § 14; Laws 1986, LB 811, § 115; Laws 1986, LB 529, § 52; Laws 1991, LB 732, § 112; Laws 1992, LB 360, § 24; Laws 1999, LB 43, § 25; Laws 2011, LB151, § 13.

#### **48-191 Time; how computed.**

Notwithstanding any more general or special law respecting the subject matter hereof, whenever the last day of the period within which a party to an action may file any document or pleading with the Nebraska Workers' Compensation Court, or take any other action with respect to a claim for compensation, falls on a Saturday, a Sunday, any day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or any day declared by statutory enactment or proclamation of the Governor to be a holiday, the next following day, which is not a Saturday, a Sunday, a day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or a day declared by such enactment or proclamation to be a holiday, shall be deemed to be the last day for filing any such document or pleading or taking any such other action with respect to a claim for compensation.

**Source:** Laws 1955, c. 187, § 1, p. 535; Laws 1986, LB 811, § 120; Laws 2003, LB 760, § 16; Laws 2011, LB151, § 14.

#### Part V

### CLAIMS AGAINST THE STATE

#### **48-193 Terms, defined.**

For purposes of sections 48-192 to 48-1,109, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, courts, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska, including the University of Nebraska and the state colleges, but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency shall not be construed to include any contractor with the State of Nebraska except and unless such contractor comes within the provisions of section 48-116;

(2) Employee of the state shall mean any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any employee of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act or any contractor with the State of Nebraska unless such contractor comes within the provisions of section 48-116;

(3) Workers' compensation claim shall mean any claim against the State of Nebraska arising under the Nebraska Workers' Compensation Act; and

(4) Award shall mean any amount determined by the Risk Manager and the Attorney General to be payable to a claimant under sections 48-192 to 48-1,109 or the amount of any compromise or settlement under such sections.

**Source:** Laws 1971, LB 390, § 2; Laws 1986, LB 811, § 122; Laws 1991, LB 6, § 1; Laws 1991, LB 81, § 3; Laws 1999, LB 87, § 75; Laws 2019, LB418, § 2.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**48-194 Risk Manager; authority; Attorney General; duties.**

The Risk Manager with the advice of the Attorney General shall have the authority to pay claims of all workers' compensation benefits when liability is undisputed. In any claims when liability or the amount of liability is disputed by the Attorney General, authority is hereby conferred upon the Attorney General to consider, ascertain, adjust, determine, and allow any workers' compensation claim. If any such claim is compromised or settled, the approval of the claimant, the Risk Manager, and the Attorney General shall be required and such settlements also shall be approved by the Nebraska Workers' Compensation Court following the procedure in the Nebraska Workers' Compensation Act.

**Source:** Laws 1971, LB 390, § 3; Laws 1972, LB 1334, § 1; Laws 1981, LB 273, § 10; Laws 1986, LB 811, § 123; Laws 1993, LB 757, § 29; Laws 2019, LB418, § 3.

**48-195 Rules and regulations.**

The risk management and state claims division of the Department of Administrative Services may, pursuant to the Administrative Procedure Act, adopt and promulgate such rules and regulations as are necessary to carry out sections 48-192 to 48-1,109.

**Source:** Laws 1971, LB 390, § 4; Laws 1986, LB 811, § 124; Laws 2000, LB 1221, § 15; Laws 2019, LB418, § 4.

**Cross References**

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

**48-196 State agency; handle claims; Attorney General; supervision.**

The Risk Manager may delegate to a state agency the handling of workers' compensation claims of employees of that agency, under the supervision and direction of the Attorney General.

**Source:** Laws 1971, LB 390, § 5; Laws 1986, LB 811, § 125; Laws 2000, LB 1221, § 16; Laws 2019, LB418, § 5.

**48-197 Claims; filing; investigation; report.**

All claims under sections 48-192 to 48-1,109 shall be filed with the Risk Manager. The Risk Manager shall immediately advise the Attorney General of the filing of any claim. It shall be the duty of the Attorney General to cause a



complete investigation to be made of all such claims. Whenever any state agency receives notice or has knowledge of any alleged injury under the Nebraska Workers' Compensation Act, such state agency shall immediately file a first report of such alleged injury with the Nebraska Workers' Compensation Court and the Risk Manager and shall file such other forms as may be required by such court or the Risk Manager.

**Source:** Laws 1971, LB 390, § 6; Laws 1972, LB 1334, § 2; Laws 1981, LB 273, § 11; Laws 1986, LB 811, § 126; Laws 1992, Third Spec. Sess., LB 14, § 2; Laws 2019, LB418, § 6.

**48-1,103 Workers' Compensation Claims Revolving Fund; established; deficiency; notify Legislature; investment.**

There is hereby established in the state treasury a Workers' Compensation Claims Revolving Fund, to be administered by the Risk Manager, from which all workers' compensation costs, including prevention and administration, shall be paid. The fund may also be used to pay the costs of administering the Risk Management Program. The fund shall receive deposits from assessments against state agencies charged by the Risk Manager to pay for workers' compensation costs. When the amount of money in the Workers' Compensation Claims Revolving Fund is not sufficient to pay any awards or judgments under sections 48-192 to 48-1,109, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the Workers' Compensation Claims Revolving 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 1971, LB 390, § 12; Laws 1981, LB 273, § 12; Laws 1986, LB 811, § 130; Laws 1994, LB 1211, § 3; Laws 1995, LB 7, § 45; Laws 2011, LB378, § 22.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-1,104 Risk Manager; report; contents.**

The Risk Manager shall submit electronically a report to the Clerk of the Legislature by January 15 of each year, which report shall include the number of claims for which payments have been made, the amounts paid by categories of medical, hospital, compensation, and other costs separated by the agency and program or activity under which the claim arose. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Risk Manager.

**Source:** Laws 1971, LB 390, § 13; Laws 1972, LB 1334, § 3; Laws 1977, LB 399, § 1; Laws 1979, LB 322, § 16; Laws 1981, LB 545, § 52; Laws 1981, LB 273, § 13; Laws 2012, LB782, § 59.

**48-1,108 Insurance policy; applicability; company; Attorney General; Risk Manager; cooperate.**

Whenever a claim or suit against the state is covered by workers' compensation insurance, the provisions of the insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of sections

48-192 to 48-1,109. The Attorney General and the Risk Manager shall cooperate with the insurance company.

**Source:** Laws 1971, LB 390, § 17; Laws 1986, LB 811, § 134; Laws 2019, LB418, § 7.

#### Part VI

#### NAME OF ACT AND APPLICABILITY OF CHANGES

##### **48-1,110 Act, how cited.**

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

**Source:** Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16; Laws 2015, LB480, § 5; Laws 2019, LB418, § 9.

##### **48-1,111 Repealed. Laws 2013, LB21, § 2.**

##### **48-1,112 Laws 2011, LB151, changes; applicability.**

Cases pending before the Nebraska Workers' Compensation Court on August 27, 2011, in which a hearing on the merits has been held prior to such date shall not be affected by the changes made in sections 48-125, 48-145.01, 48-155, 48-156, 48-170, 48-178, 48-180, 48-182, and 48-185 by Laws 2011, LB151. Any cause of action not in suit on August 27, 2011, and any cause of action in suit in which a hearing on the merits has not been held prior to such date shall follow the procedures in such sections as amended by Laws 2011, LB151.

**Source:** Laws 2011, LB151, § 15.

#### Part VII

#### COMPENSATION COURT CASH FUND

##### **48-1,116 Compensation Court Cash Fund; created; use; investment.**

The Compensation Court Cash Fund is hereby created. The fund shall be used to aid in providing for the expense of administering the Nebraska Workers' Compensation Act and the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court.

All fees received pursuant to sections 48-120, 48-120.02, 48-138, 48-139, 48-145.04, and 48-165 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. The fund shall also consist of amounts credited to the fund pursuant to sections 48-1,113, 48-1,114, and 77-912. The State Treasurer may receive and credit to the fund any money which may at any time be contributed to the state or the fund by the federal government or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

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

**Source:** Laws 1993, LB 757, § 22; Laws 1994, LB 1066, § 35; Laws 2002, LB 1310, § 5; Laws 2005, LB 13, § 33; Laws 2009, First Spec. Sess., LB3, § 24; Laws 2017, LB331, § 24; Laws 2018, LB945, § 11; Laws 2019, LB293, § 30.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Part VIII

COST-BENEFIT ANALYSIS

**48-1,118 Cost-benefit analysis and review of Laws 1993, LB 757; reports.**

On January 1, 1997, the Governor shall direct the Director of Insurance and the Commissioner of Labor to conduct and complete a cost-benefit analysis and a review of the effectiveness of the changes made by Laws 1993, LB 757, to control or reduce the cost of workers' compensation premiums. Information for the study may be elicited from interested persons and from the Nebraska Workers' Compensation Court. The director and the commissioner shall submit a report, which may include recommendations for further legislation, to the chairperson of the Business and Labor Committee of the Legislature, the Clerk of the Legislature, and the Governor by October 1, 1997. The Business and Labor Committee of the Legislature shall hold a public hearing on the study and shall submit a report to the Legislature by December 1, 1997. The Governor or the Legislature, by resolution, may require a similar study in 1999 and every two years thereafter. Any report submitted to the committee and the Clerk of the Legislature shall be submitted electronically.

**Source:** Laws 1993, LB 757, § 40; Laws 2012, LB782, § 60.

ARTICLE 2

GENERAL PROVISIONS

Section

- 48-201. Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.
- 48-202. Public employer; applicant; disclosure of criminal record or history; limitation.
- 48-203. Legislative findings, declarations, and intent; veterans' program coordinator; qualifications; duties; Department of Veterans' Affairs; duties.
- 48-209. Repealed. Laws 2020, LB1016, § 12.
- 48-210. Repealed. Laws 2020, LB1016, § 12.
- 48-211. Repealed. Laws 2020, LB1016, § 12.
- 48-225. Veterans preference; terms, defined.
- 48-226. Veterans preference; required, when.
- 48-227. Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.
- 48-238. Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.

**48-201 Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.**

(1)(a) A current or former employer may disclose the following information about a current or former employee's employment history to a prospective

employer of the current or former employee upon receipt of written consent from the current or former employee:

- (i) Date and duration of employment;
- (ii) Pay rate and wage history on the date of receipt of written consent;
- (iii) Job description and duties;
- (iv) The most recent written performance evaluation prepared prior to the date of the request and provided to the employee during the course of his or her employment;
- (v) Attendance information;
- (vi) Results of drug or alcohol tests administered within one year prior to the request;
- (vii) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;
- (viii) Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and
- (ix) Whether the employee is eligible for rehire.

(b) The current or former employer disclosing such information shall be presumed to be acting in good faith and shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing by a preponderance of the evidence that the information disclosed by the current or former employer was false, and the current or former employer had knowledge of its falsity or acted with malice or reckless disregard for the truth.

(2)(a) The consent required in subsection (1) of this section shall be on a separate form from the application form or, if included in the application form, shall be in bold letters and in larger typeface than the largest typeface in the text of the application form. The consent form shall state, at a minimum, language similar to the following:

I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer).

(b) The consent must be signed and dated by the applicant.

(c) The consent will be valid for no longer than six months.

(3) This section shall also apply to any current or former employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(4)(a) This section does not require any prospective employer to request employment history on a prospective employee and does not require any current or former employer to disclose employment history to any prospective employer.

(b) Except as specifically amended in this section, the common law of this state remains unchanged as it relates to providing employment information on current and former employees.

(c) This section applies only to causes of action accruing on and after July 19, 2012.

(5) The immunity conferred by this section shall not apply when an employer discriminates or retaliates against an employee because the employee has

exercised or is believed to have exercised any federal or state statutory right or undertaken any action encouraged by the public policy of this state.

**Source:** Laws 2012, LB959, § 1.

**48-202 Public employer; applicant; disclosure of criminal record or history; limitation.**

(1) Except as otherwise provided in this section, a public employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the applicant's criminal record or history, including any inquiry on any employment application, until the public employer has determined the applicant meets the minimum employment qualifications.

(2) This section does not apply to any law enforcement agency, to any position for which a public employer is required by federal or state law to conduct a criminal history record information check, or to any position for which federal or state law specifically disqualifies an applicant with a criminal background.

(3)(a) This section does not prevent a public employer that is a school district or educational service unit from requiring an applicant for employment to disclose an applicant's criminal record or history relating to sexual or physical abuse.

(b) This section does not prevent a public employer from preparing or delivering an employment application that conspicuously states that a criminal history record information check is required by federal law, state law, or the employer's policy.

(c) This section does not prevent a public employer from conducting a criminal history record information check after the public employer has determined that the applicant meets the minimum employment qualifications.

(4) For purposes of this section:

(a) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime, the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state, and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(b) Public employer means an agency or department of this state or of any political subdivision of this state.

**Source:** Laws 2014, LB907, § 12.

**48-203 Legislative findings, declarations, and intent; veterans' program coordinator; qualifications; duties; Department of Veterans' Affairs; duties.**

(1) The Legislature finds and declares that:

(a) Nebraska is a welcoming state for veterans and their families; and

(b) Nebraska is committed to workforce development initiatives that help attract and retain veterans and their families.

(2) It is the intent of the Legislature to:

(a) Increase efforts to create public awareness among veterans and their families about the benefits of living and working in Nebraska, including special initiatives enacted to make Nebraska a veteran-friendly state; and

(b) Develop new initiatives to better connect veterans to Nebraska's job market and the workforce development needs of employers.

(3) The position of veterans' program coordinator shall be maintained by the Department of Labor. The coordinator shall be a veteran and a full-time employee of the Department of Labor and shall:

(a) Seek advice and input from the Commission on Military and Veteran Affairs related to veterans' workforce development issues;

(b) Be a nonvoting, ex officio member of the Commission on Military and Veteran Affairs; and

(c) Submit an annual progress report to the Commission on Military and Veteran Affairs.

(4) The Department of Labor shall provide the necessary staff to assist the veterans' program coordinator in carrying out the purposes of this section.

(5) The Department of Veterans' Affairs shall:

(a) Develop a web site, in collaboration with the Department of Labor, with a job-search tool specific to veterans. Such web site shall be implemented on a date designated by the Director of Veterans' Affairs when sufficient cash funds have accumulated in the Veterans Employment Program Fund to develop such web site, but no later than June 30, 2024; and

(b) Research best practices and web sites specific to veterans from other states.

**Source:** Laws 2019, LB138, § 1.

**48-209 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-210 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-211 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-225 Veterans preference; terms, defined.**

For purposes of sections 48-225 to 48-231:

(1) Servicemember means a person who serves on active duty in the armed forces of the United States except for training;

(2) Veteran means:

(a) A person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions); or

(b) The spouse of a veteran who has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs;

(3) Full-time duty means duty during time of war or during a period recognized by the United States Department of Veterans Affairs as qualifying

for veterans benefits administered by the department and that such duty from January 31, 1955, to February 28, 1961, exceeded one hundred eighty days unless lesser duty was the result of a service-connected or service-aggravated disability;

(4) Disabled veteran means an individual who has served on active duty in the armed forces of the United States, has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) therefrom, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department; and

(5) Preference eligible means any veteran as defined in this section or the spouse of a servicemember as defined in this section, except that for a spouse of a servicemember such preference is limited to the time during which the servicemember serves on active duty as described in subdivision (1) of this section and up to one hundred eighty days after the servicemember's discharge or separation from service.

**Source:** Laws 1969, c. 751, § 1, p. 2826; Laws 1991, LB 2, § 6; Laws 2001, LB 368, § 1; Laws 2005, LB 54, § 7; Laws 2014, LB588, § 2; Laws 2017, LB639, § 1.

#### **48-226 Veterans preference; required, when.**

A preference shall be given to preference eligibles seeking employment with the State of Nebraska or its governmental subdivisions. Such preference includes initial employment or a return to employment with the State of Nebraska or its governmental subdivisions if termination of previous employment was for other than disciplinary reasons.

**Source:** Laws 1969, c. 751, § 2, p. 2827; Laws 1997, LB 5, § 1; Laws 2017, LB639, § 2.

#### **48-227 Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.**

(1) Veterans who obtain passing scores on all parts or phases of an examination or numerical scoring shall have five percent added to their passing score if a claim for such preference is made on the application. An additional five percent shall be added to the passing score or numerical scoring of any disabled veteran.

(2) When no examination or numerical scoring is used, the preference shall be given to the qualifying veteran if two or more equally qualified candidates are being considered for the position.

(3) All notices of positions of employment available for veterans preference and all applications for such positions by the state or its governmental subdivisions shall state that the position is subject to a veterans preference.

(4) A veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214, or its successor form or record. A spouse of a veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214 or its successor form or record, a copy of the veteran's disability verification from the United

States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating, and proof of marriage to the veteran. Any marriage claimed for veterans preference must be valid under Nebraska law.

(5) Within thirty days after filling a position, veterans who have applied and are not hired shall be notified by regular mail, electronic mail, telephone call, or personal service that they have not been hired. Such notice also shall advise the veteran of any administrative appeal available.

**Source:** Laws 1969, c. 751, § 3, p. 2827; Laws 1997, LB 5, § 2; Laws 2005, LB 54, § 8; Laws 2014, LB588, § 3; Laws 2018, LB497, § 1.

**48-238 Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.**

(1) For purposes of this section:

(a) Private employer means a sole proprietorship, a corporation, a partnership, an association, a limited liability company, or any other entity with one or more employees;

(b) Veteran means (i) a person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), or (ii) the spouse of a veteran who (A) has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs or (B) was killed in hostile action; and

(c) Voluntary veterans preference employment policy means a private employer's voluntary preference for hiring and promoting a veteran over another equally qualified applicant or employee.

(2) A private employer may adopt a voluntary veterans preference employment policy. Such policy shall be in writing and applied uniformly to decisions regarding hiring and promotion.

(3) If a private employer offers a voluntary veterans preference employment policy, a veteran desiring to use such policy shall provide the private employer with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214, or its successor form or record. A spouse of a veteran desiring to use such preference shall provide the private employer with a copy of the veteran's Department of Defense Form 214 or its successor form or record, proof of marriage to the veteran, and either (a) a copy of the veteran's disability verification from the United States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating or (b) a copy of the veteran's Department of Defense Form 1300 or its successor form documenting that the veteran was killed in hostile action.

(4) If a private employer implements a voluntary veterans preference employment policy, it shall notify the Commissioner of Labor of such policy. The commissioner shall use the information to maintain a registry of the private employers that have a voluntary veterans preference employment policy in Nebraska.



(5) A voluntary veterans preference employment policy shall not be considered a violation of any state or local equal employment opportunity law including the Nebraska Fair Employment Practice Act.

**Source:** Laws 2015, LB272, § 1; Laws 2018, LB497, § 2.

**Cross References**

Nebraska Fair Employment Practice Act, see section 48-1125.

**ARTICLE 3  
CHILD LABOR**

**Section**

48-301. Terms, defined.

48-303. Employment certificate; approval by school officer; report; investigation.

48-307. Employment certificate; filing with Department of Labor.

**48-301 Terms, defined.**

For purposes of sections 48-302 to 48-313:

(1) Employment means (a) service for wages or (b) being under a contract of hire, written or oral, express or implied. Employment, other than detasseling, does not include any employment for which the employer is not liable for payment of the combined tax or payment in lieu of contributions under section 48-648, 48-649 to 48-649.04, or 48-660.01; and

(2) Detasseling means the removal of weeds, off-type and rogue plants, and corn tassels in hand pollinating and in any other engagement in hand labor in the production of seed.

**Source:** Laws 1995, LB 330, § 1; Laws 2001, LB 180, § 3; Laws 2017, LB172, § 3.

**48-303 Employment certificate; approval by school officer; report; investigation.**

Except as otherwise provided in this section, an employment certificate shall be approved only by the superintendent of the school district in which the child resides or by a person authorized by him or her in writing or, when there is no superintendent, by a person authorized by the school district officers, except that no school district officer or other person authorized by this section may approve such certificate for any child then in or about to enter his or her own employment or the employment of a firm or corporation of which he or she is a member, officer, or employee or in whose business he or she is interested. If a child who resides in an adjoining state seeks to work in Nebraska, the Department of Labor may approve the employment certificate. The officer or person approving such certificate may administer the oath provided for therein or in any investigation or examination necessary for the approval thereof. No fee shall be charged for approving any such certificate or for administering any oath or rendering any services related thereto. The school board or board of education of each school district approving the employment certificate, or the department if the department has approved the employment certificate, shall establish and maintain proper records where copies of all such certificates and all documents connected therewith shall be filed and preserved and shall provide the necessary clerical services for carrying out sections 48-302 to 48-313. The person who issued the employment certificate shall report to the

department any complaint concerning the conditions of employment of a child for whom a certificate is in force. Upon receipt of the report, the department shall make such investigation as it deems advisable to protect an individual child or to promote the youth-work program.

**Source:** Laws 1907, c. 66, § 3, p. 260; R.S.1913, § 3577; Laws 1919, c. 190, tit. IV, art. III, § 3, p. 551; C.S.1922, § 7671; C.S.1929, § 48-303; R.S.1943, § 48-303; Laws 1967, c. 296, § 2, p. 805; Laws 1987, LB 35, § 2; Laws 1999, LB 272, § 19; Laws 2001, LB 180, § 4; Laws 2018, LB377, § 6.

#### **48-307 Employment certificate; filing with Department of Labor.**

The superintendent of public schools in all cities having a population 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 the presiding officer of all other school boards shall furnish a duplicate copy of all certificates issued under sections 48-302 to 48-313 to the Department of Labor. The duplicate certificates in the form set forth in section 48-309 shall be filed with the Department of Labor at the time of the issuance of the original certificate.

**Source:** Laws 1907, c. 66, § 7, p. 262; R.S.1913, § 3581; Laws 1919, c. 190, tit. IV, art. III, § 7, p. 553; C.S.1922, § 7675; C.S.1929, § 48-307; R.S.1943, § 48-307; Laws 1987, LB 35, § 3; Laws 2017, LB113, § 45.

### **ARTICLE 4**

#### **HEALTH AND SAFETY REGULATIONS**

##### Section

48-436. Terms, defined.

48-437. High voltage lines; prohibited acts; penalty.

48-438. High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.

48-440. Repealed. Laws 2020, LB1016, § 12.

48-442. Violations; penalty.

#### **48-436 Terms, defined.**

For purposes of sections 48-436 to 48-442, unless the context otherwise requires:

(1) High voltage means a voltage in excess of six hundred volts, measured between conductors, or measured between the conductor and the ground; and

(2) Authorized and qualified persons includes employees of any electric utility, public power district, or public power and irrigation district with respect to the electrical systems of such utilities, employees of communications utilities, common carriers engaged in interstate commerce, state, county, or municipal agencies with respect to work relating to their facilities on the poles or structures of an electric utility or railway transportation system, employees of a railway transportation system or a metropolitan utilities district engaged in the normal operation of such system, and employees of a contractor with respect to work under his or her supervision when such work is being performed under contract for, or as an agent of, the owner of the above utilities, companies, or agencies, so long as all such persons meet the require-

ments for working near overhead high voltage conductors as provided in 29 C.F.R. 1910.269(a)(2)(ii) through 1910.269(a)(3), as such regulations existed on July 19, 2012.

**Source:** Laws 1969, c. 390, § 1, p. 1370; Laws 2012, LB997, § 1.

**48-437 High voltage lines; prohibited acts; penalty.**

(1) No person, firm, or corporation, or agent of such person, firm, or corporation, shall require or permit any employee, except an authorized and qualified person, to perform and no person, except an authorized and qualified person, shall perform any function within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442; or enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair, or other operations, or to erect, install, operate, or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house-moving, well-drilling, pile-driving, or hoisting equipment, within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442, unless and until danger from accidental contact with such high voltage conductors has been effectively guarded against in the manner prescribed in sections 48-436 to 48-442.

(2)(a) No person except an authorized and qualified person shall manipulate overhead high voltage conductors or other components, including the poles and other structures, of an electric utility. Under no circumstances shall an authorized and qualified person work on the electrical system of an electric utility that he or she is not employed by unless written authorization has been obtained from such electric utility. This subsection shall not be construed to apply to activities performed by an authorized and qualified person employed by an electric utility on the electrical system of another electric utility when the nonowning or nonoperating electric utility has a written agreement with the owning and operating electric utility (i) providing for the joint use of or interconnection of the electrical systems of both the electric utilities or (ii) approving authorized and qualified persons employed by the nonowning or nonoperating electric utility to work on the electrical system of the owning or operating electric utility on an ongoing basis.

(b) Any person, firm, or corporation, or any employee thereof, violating any provisions of this subsection shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 390, § 2, p. 1371; Laws 2012, LB997, § 2; Laws 2016, LB973, § 1.

**48-438 High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.**

(1) Except as provided in subsections (2) and (3) of this section, the operation or erection of any tools, machinery, or equipment, or any part thereof capable of vertical, lateral, or swinging motion, or the handling or storage of any supplies, materials, or apparatus or the moving of any house or other building, or any part thereof, under, over, by, or near overhead high voltage conductors, shall be prohibited if, at any time during such operation or other manipulation, it is possible to bring such equipment, tools, materials, building, or any part thereof within ten feet of such overhead high voltage conductors, except where such high voltage conductors have been effectively guarded against danger from accidental contact, by any of the following:

(a) Erection of mechanical barriers to prevent physical contact with high voltage conductors;

(b) Deenergizing of the high voltage conductors and grounding where necessary; or

(c) Temporary relocation of overhead high voltage conductors.

(2) The minimum distance required by this section for cranes or other boom type equipment in transit with no load and with raiseable portions lowered shall be four feet.

(3) Nothing in sections 48-436 to 48-442 shall prohibit the moving of general farm equipment under high voltage conductors where clearances required by sections 48-436 to 48-442 are maintained.

(4) The activities performed as described in subdivisions (1)(a), (b), and (c) of this section shall be performed only by the owner or operator of the high voltage conductors unless written authorization has been obtained from such owner or operator. This subsection shall not be construed to apply to activities performed by an electric utility on high voltage conductors of another electric utility when the electric utilities have a written agreement (a) providing for joint use of poles or structures supporting the high voltage conductors of the electric utilities or (b) approving the nonowning electric utility's performance of the activities described in subdivisions (1)(a), (b), and (c) of this section on an ongoing basis on the owning or operating electric utility's high voltage conductors.

**Source:** Laws 1969, c. 390, § 3, p. 1371; Laws 2012, LB997, § 3.

**48-440 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-442 Violations; penalty.**

Except as provided in subdivision (2)(b) of section 48-437, any person, firm, or corporation, or any employee thereof, violating any provisions of sections 48-436 to 48-442 shall be guilty of a Class V misdemeanor. Each day's failure to comply with any of the provisions of sections 48-436 to 48-442 shall constitute a separate violation.

**Source:** Laws 1969, c. 390, § 7, p. 1373; Laws 1977, LB 40, § 287; Laws 2016, LB973, § 2.

**ARTICLE 5**

**EMPLOYMENT AGENCIES**

Section

- 48-501.01. Repealed. Laws 2020, LB1016, § 12.
- 48-503. Repealed. Laws 2020, LB1016, § 12.
- 48-504. Repealed. Laws 2020, LB1016, § 12.
- 48-505. Repealed. Laws 2020, LB1016, § 12.
- 48-506. Repealed. Laws 2020, LB1016, § 12.
- 48-507. Repealed. Laws 2020, LB1016, § 12.
- 48-508. Repealed. Laws 2020, LB1016, § 12.
- 48-510. Repealed. Laws 2020, LB1016, § 12.
- 48-511. Repealed. Laws 2020, LB1016, § 12.
- 48-512. Repealed. Laws 2020, LB1016, § 12.
- 48-513. Repealed. Laws 2020, LB1016, § 12.
- 48-514. Repealed. Laws 2020, LB1016, § 12.

## Section

48-515.	Repealed. Laws 2020, LB1016, § 12.
48-516.	Repealed. Laws 2020, LB1016, § 12.
48-517.	Repealed. Laws 2020, LB1016, § 12.
48-518.	Repealed. Laws 2020, LB1016, § 12.
48-519.	Repealed. Laws 2020, LB1016, § 12.
48-520.	Repealed. Laws 2020, LB1016, § 12.
48-521.	Repealed. Laws 2020, LB1016, § 12.
48-523.	Repealed. Laws 2020, LB1016, § 12.
48-524.	Repealed. Laws 2020, LB1016, § 12.

**48-501.01 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-503 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-504 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-505 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-506 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-507 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-508 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-510 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-511 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-512 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-513 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-514 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-515 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-516 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-517 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-518 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-519 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-520 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-521 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-523 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**48-524 Repealed. Laws 2020, LB1016, § 12.**

Operative date July 25, 2020.

**ARTICLE 6****EMPLOYMENT SECURITY**

## Section

- 48-601. Act, how cited.  
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 48-604. Employment, defined.  
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 48-613. Oaths; depositions; subpoenas.  
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 48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.  
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 48-627.01. Benefits; monetary eligibility; earned wages; adjustment.  
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## EMPLOYMENT SECURITY

Section	
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**48-601 Act, how cited.**

Sections 48-601 to 48-683 shall be known and may be cited as the Employment Security Law.

**Source:** Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp.,1941, § 48-701; R.S.1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3; Laws 2010, LB1020, § 1; Laws 2014, LB961, § 12; Laws 2017, LB172, § 4.

**48-602 Terms, defined.**

For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Agricultural labor means services performed:



(a) On a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

(b) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d)(i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or (ii) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (1)(d)(i) of this section, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (1)(d)(i) and (ii) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(2) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that if the individual is not monetarily eligible for unemployment benefits as determined pursuant to section 48-627.01 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make a redetermination of monetary eligibility based upon an alternative base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year;

(3) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(4) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627.01. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in,

within, or during that benefit year which includes the greater part of such week;

(5) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(6) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(7) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(8) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(9) Commissioner means the Commissioner of Labor;

(10) Commodity means an agricultural commodity as defined in section 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C. 1141j;

(11) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(12) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649 to 48-649.04;

(13) Crew leader means an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(14) Department means the Department of Labor;

(15) Employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industry Classification System;

(16) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(17) Farm means stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(18) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(19) Hearing officer means a person employed by the Department of Labor who conducts hearings, contested cases, or other proceedings pursuant to the Employment Security Law;

(20) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(21) Insured work means employment for employers;

(22) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled as a matter of state or federal law;

(23) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(24) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649.04, 48-652, 48-660.01, and 48-661;

(25) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(26) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(27) Standard rate means the rate assigned to category twenty for that year under section 48-649.03. The standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(28) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(29) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649 to 48-649.04;

(30) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(31) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(32) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work

situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(33) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(34) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on January 1, 2015, which receives credit from the state Unemployment Compensation Fund;

(35) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations adopted and promulgated by the commissioner. Wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on January 1, 2015, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on January 1, 2015; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(36) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(37) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(38) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(39) Worksite employee has the same meaning as the term covered employee in section 48-2702.

**Source:** Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p.

373; C.S.Supp.,1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S.1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB265, § 4; Laws 2007, LB296, § 216; Laws 2010, LB579, § 20; Laws 2010, LB1020, § 2; Laws 2015, LB271, § 1; Laws 2017, LB172, § 5.

#### **48-603 Employer, defined.**

As used in the Employment Security Law, unless the context clearly requires otherwise, employer shall mean:

(1) Any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which for some portion of a day but not necessarily simultaneously in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; all individuals performing services for any employer of any person in this state, who maintains two or more separate establishments within this state, shall be deemed to be employed by a single employer; any artifice or device, including any contract or subcontract, by an employer for the performance of work, which is a part of such employer's usual trade, occupation, profession, or business, entered into for the purpose or with the intent of evading the application of this section to such employer, is hereby prohibited and declared to be unlawful;

(2) Any employer of any person in this state who in any calendar quarter in either the current or preceding calendar year has paid wages for employment in the total sum of fifteen hundred dollars or more;

(3) Any individual or employer of any person in this state which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer which, at the time of such acquisition, was an employer subject to the Employment Security Law;

(4) Any employer of any person in this state, which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer of any person in this state, not an employer subject to such law, and which, if

subsequent to such acquisition it were treated as a single unit with such other employer, would be an employer under subdivision (1) or (2) of this section;

(5) Any employer of any person in this state which, having become an employer under any provision of the Employment Security Law and which has not, under section 48-661, ceased to be an employer subject to such law;

(6) For the effective period of its election pursuant to section 48-661, any other employer of any person in this state who has elected to become fully subject to the Employment Security Law;

(7) Any employer of any person in this state not an employer by reason of any other subdivision of this section (a) for which services in employment are or were performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or (b) which, as a condition for approval of the Employment Security Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer under the Employment Security Law;

(8) The state or any political subdivision thereof and any instrumentality of any one or more of the foregoing;

(9) Any organization for which service in employment as defined in subdivision (4)(b) of section 48-604 is performed;

(10) Any individual or employing unit for which service in employment as defined in subdivision (4)(c) of section 48-604 is performed;

(11) Any individual or employing unit for which service in employment as defined in subdivision (4)(d) of section 48-604 is performed; and

(12)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision (1) or (10) of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account; and

(b) In determining whether or not an employing unit for which agricultural labor is also performed is an employer under subdivision (11) of this section, the wages earned or the employment of an employee performing services in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

**Source:** Laws 1937, c. 108, § 2, p. 371; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 374; C.S.Supp.,1941, § 48-702; R.S.1943, § 48-603; Laws 1945, c. 114, § 1, p. 369; Laws 1955, c. 190, § 1, p. 538; Laws 1971, LB 651, § 2; Laws 1977, LB 509, § 2; Laws 1985, LB 339, § 3; Laws 1993, LB 121, § 290; Laws 2015, LB271, § 2.

#### **48-603.01 Indian tribes; applicability of Employment Security Law.**

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on January

1, 2015, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on January 1, 2015, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Section 48-628.06 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in section 48-649.04 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection



activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on January 1, 2015;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

(8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

**Source:** Laws 2001, LB 192, § 2; Laws 2003, LB 199, § 1; Laws 2005, LB 739, § 4; Laws 2015, LB271, § 3; Laws 2017, LB172, § 6.

**48-604 Employment, defined.**

As used in the Employment Security Law, unless the context otherwise requires, employment shall mean:

(1) Any service performed, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if (i) the service is performed entirely within such state or (ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to the Employment Security Law if the commissioner approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to such law;

(b) Services of an individual wherever performed within the United States or Canada if (i) such service is not covered under the employment compensation law of any other state or Canada and (ii) the place from which the service is directed or controlled is in this state; and

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

(B) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; the employer is a corporation or limited liability company which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of subdivisions (A) and (B) of this subdivision are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the laws of this state.

(ii) American employer, for the purposes of this subdivision, shall mean: (A) An individual who is a resident of the United States; (B) a partnership if two-thirds or more of the partners are residents of the United States; (C) a trust if all the trustees are residents of the United States; or (D) a corporation or limited liability company organized under the laws of the United States or of any state.

(iii) The term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4)(a) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not otherwise excluded under this section;

(b) Service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: (i) The service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(8), and is not otherwise excluded under this section; and (ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c)(i) Service performed by an individual in agricultural labor if such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(ii) For purposes of this subdivision:

(A) Any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, 29 U.S.C. 1801 et seq.; substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and such individual is not an employee of such other person within the meaning of any other provisions of this section; and

(B) In case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (A) of this subdivision, such other person and not the crew leader shall be treated as the employer of such individual and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and

(d) Service performed by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profes-

sion, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

(a) Agricultural labor, except as provided in subdivision (4)(c) of this section;

(b) Domestic service, except as provided in subdivision (4)(d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (c)(i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(e) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649 to 48-649.04, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the Employment Security Law shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, except that if this state is not certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code as defined in section 49-801.01, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected;

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (v) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

(g) For the purposes of subdivisions (4)(a) and (4)(b) of this section, service performed:

(i) In the employ of (A) a church or convention or association of churches or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order;

(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(iv) As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(v) By an inmate of a custodial or penal institution;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(i) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01, other than an organization described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01, or under section 521 thereof, if the remuneration for such service is less than fifty dollars;

(j) Service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled, regularly attending classes at, and working for such school, college, or university pursuant to a financial assistance arrangement with such school, college, or university or (ii) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that (A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and (B) such employment will not be covered by any program of unemployment insurance;

(k) Service performed as a student nurse in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(l) Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;

(m) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) Service performed by an individual in the sale, delivery, or distribution of newspapers or magazines under a written contract in which (i) the individual acknowledges that the individual performing the service and the service are not covered and (ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(o) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers;

(p) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102 or section 75-302, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual;

(s) Service performed by an individual as a volunteer research subject who is paid on a per study basis for scientific, medical, or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 or any governmental entity;

(t) Service performed by a direct seller if:

(i) Such person is engaged in sales primarily in person and is:

(A) Engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment;

(B) Engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; or

(C) Engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(ii) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorps, because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service pursuant to 42 U.S.C. 12511(30)(B); and

(v) Service performed at a penal or custodial institution by a person committed to a penal or custodial institution;

(7) If the services performed during one-half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision, the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her when any of such service is excepted by subdivision (6)(h) of this section; and

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, as amended, is required to be covered under the Employment Security Law.

**Source:** Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp., 1941, § 48-702; R.S. 1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c. 167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws 1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168,

§ 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2; Laws 2011, LB261, § 1; Laws 2016, LB830, § 1; Laws 2017, LB172, § 7.

**48-605 Commissioner; salary.**

The commissioner, for his or her services with respect to the administration of the Employment Security Law, shall receive the salary of the commissioner as set out in section 81-103.

**Source:** Laws 1937, c. 108, § 10, p. 389; Laws 1939, c. 56, § 15, p. 254; Laws 1941, c. 94, § 15, p. 401; C.S.Supp.,1941, § 48-710; R.S. 1943, § 48-605; Laws 1947, c. 175, § 3, p. 572; Laws 1949, c. 163, § 3, p. 420; Laws 1961, c. 239, § 1, p. 712; Laws 1984, LB 747, § 1; Laws 1985, LB 339, § 5; Laws 2015, LB271, § 4.

**48-606 Commissioner; duties; powers; annual report; schedule of fees.**

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable, if consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the first day of January of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding combined tax rate computational period ending September 30. The report shall include a balance sheet of the money in the fund in which there shall be provided a reserve against the liability in future years to pay benefits in excess of the then current contributions. The reserve shall be set up by the commissioner. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature and make recommendations with respect thereto. Such information and recommendations submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such information upon request to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

**Source:** Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c.



167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5; Laws 2012, LB782, § 61; Laws 2017, LB172, § 8.

**48-606.01 Commissioner; office space; acquire; approval of Department of Administrative Services.**

The commissioner, with the written consent of the Department of Administrative Services, is authorized and empowered to use any funds available under either subdivision (1)(a) or (1)(b) of section 48-621, for the purpose of acquiring suitable office space within the corporate limits of the state capital city for the administration of the Employment Security Law. Office space may be acquired by purchase, by contract, or in any other manner including the right to use such funds, or any part thereof, to assist in financing the construction of any building erected by the State of Nebraska or any of its agencies. If the Department of Labor assists in financing the construction of any building erected by the State of Nebraska or any of its agencies under a lease or contract between the commissioner and the State of Nebraska or such other agency, the Department of Labor shall continue to occupy such space rent free after the cost of financing such building has been liquidated. The commissioner, upon approval by the Department of Administrative Services, is authorized and empowered to use any such funds to acquire suitable office space for local employment offices anywhere in the State of Nebraska.

**Source:** Laws 1953, c. 167, § 4(2), p. 530; Laws 1955, c. 190, § 2, p. 540; Laws 1961, c. 239, § 2, p. 713; Laws 1975, LB 359, § 1; Laws 1984, LB 747, § 2; Laws 1985, LB 339, § 7; Laws 1995, LB 1, § 1; Laws 2000, LB 953, § 2; Laws 2017, LB172, § 9.

**48-609 Personnel; powers of commissioner; bond or insurance; retirement system.**

(1) Subject to other provisions of the Employment Security Law, the Commissioner of Labor is authorized to appoint, fix the compensation of, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his or her duties under such law. The commissioner may delegate to any such person such power and authority as he or she deems reasonable and proper for the effective administration of such law. Employees handling money or signing warrants under such law shall be bonded or insured as required by section 11-201. The commissioner may pay the share of the premium from the Employment Security Administration Fund. The commissioner shall classify positions under such law and shall establish salary schedules and minimum personnel standards for the positions so classified. The commissioner shall follow State Personnel System rules, regulations, and contract requirements for appointments, promotions, demotions, and terminations for cause based upon ratings of efficiency and fitness.

(2) Any person employed by the department and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources shall be enrolled in the State Employees Retirement System of the State of Nebraska when he or she becomes eligible.

**Source:** Laws 1937, c. 108, § 11, p. 391; Laws 1939, c. 56, § 8, p. 246; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-609; Laws 1961, c.

240, § 1, p. 715; Laws 1978, LB 653, § 10; Laws 1984, LB 747, § 3; Laws 1985, LB 339, § 10; Laws 1987, LB 272, § 1; Laws 1989, LB 29, § 1; Laws 2004, LB 884, § 21; Laws 2017, LB172, § 10.

**Cross References**

State Employees Retirement Act, see section 84-1331.

**48-612 Employers; records and reports required; privileged communications; violation; penalty.**

(1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as required by the Commissioner of Labor. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and a hearing officer may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, deemed necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information obtained pursuant to this section or obtained from any employer or individual pursuant to the administration of the Employment Security Law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged. Any such letters, reports, communications, or other matters shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

**Source:** Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-612; Laws 1945, c. 115, § 2, p. 381; Laws 1977, LB 40, § 290; Laws 1985, LB 339, § 11; Laws 1993, LB 757, § 31; Laws 2001, LB 192, § 5; Laws 2007, LB265, § 6; Laws 2017, LB172, § 11.

**48-612.01 Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.**

(1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Any claimant or employer or representative of a claimant or employer, as a party before a hearing officer or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of the claim or appeal;

(b) The names, addresses, and identification numbers of employers may be disclosed to the Nebraska Workers' Compensation Court which may use such

information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Hearing officer decisions rendered pursuant to the Employment Security Law and designated as precedential by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in printed or electronic format if all social security numbers have been removed and disclosure is consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) For use in reports and publications containing information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program. The third party or agent must obtain a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the disclosed information.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To an individual or employer if the information requested pertains only to the individual or employer making the request;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) To a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information. Costs shall be recovered unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

**Source:** Laws 2007, LB265, § 7; Laws 2009, LB631, § 1; Laws 2017, LB172, § 12.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-613 Oaths; depositions; subpoenas.**

In the discharge of the duties imposed by the Employment Security Law, the Commissioner of Labor, an impartial hearing officer employed by the Department of Labor, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of such law.

**Source:** Laws 1937, c. 108, § 11, p. 393; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-613; Laws 1985, LB 339, § 12; Laws 2001, LB 192, § 6; Laws 2017, LB172, § 13.

**48-614 Subpoenas; contumacy or disobedience; punishable as contempt; penalty.**

The Commissioner of Labor, a hearing officer, or a duly authorized representative of the commissioner may petition a court to enforce a subpoena issued by the commissioner or a hearing officer in case of contumacy by any person or refusal of any person to obey such a subpoena. Any court of this state which has subject matter jurisdiction and has venue jurisdiction of the place where the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction to issue such person an order requiring him or her to appear before the commissioner, a hearing officer, or a duly authorized representative and to produce evidence or give testimony if so ordered touching

the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as contempt. Any person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power so to do, in obedience to a subpoena of the commissioner, a hearing officer, or a duly authorized representative shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

**Source:** Laws 1937, c. 108, § 11, p. 393; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-614; Laws 1977, LB 40, § 291; Laws 2001, LB 192, § 7; Laws 2017, LB172, § 14.

**48-616 Commissioner of Labor; cooperation with Secretary of Labor of the United States; duties.**

In the administration of the Employment Security Law, the Commissioner of Labor shall cooperate, to the fullest extent consistent with such law, with the Secretary of Labor of the United States. The commissioner is authorized and directed to adopt appropriate rules and regulations, administrative methods, and standards, as may be necessary to secure to this state and its citizens all advantages available under the Social Security Act, under sections 3303 and 3304 of the Federal Unemployment Tax Act, and under the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes, approved June 6, 1933, as amended. The commissioner shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under any of such acts. The commissioner shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports. Upon request, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the Employment Security Law. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

**Source:** Laws 1937, c. 108, § 11, p. 394; Laws 1939, c. 56, § 8, p. 247; Laws 1941, c. 94, § 16, p. 401; C.S.Supp.,1941, § 48-711; R.S. 1943, § 48-616; Laws 1961, c. 238, § 3, p. 709; Laws 1985, LB 339, § 13; Laws 2017, LB172, § 15.

**48-617 Unemployment Compensation Fund; establishment; composition; investment.**

(1) There is hereby established as a special fund, separate and apart from all public money or funds of this state, an Unemployment Compensation Fund. The fund shall be administered by the Commissioner of Labor exclusively for the purposes of the Employment Security Law. The fund shall consist of:

(a) All contributions and payments in lieu of contributions collected under such law together with any interest thereon collected pursuant to sections 48-655 to 48-660.01, except as provided in subdivision (1)(b) of section 48-621;

(b) Interest earned upon any money in the fund;

(c) Any property or securities acquired through the use of money belonging to the fund;

(d) All earnings of such property or securities;

(e) All money credited to this state's account in the Unemployment Trust Fund pursuant to section 903 of the federal Social Security Act, as amended; and

(f) All other money received for the fund from any other source.

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

**Source:** Laws 1937, c. 108, § 9, p. 387; Laws 1939, c. 56, § 7, p. 243; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-617; Laws 1947, c. 175, § 4, p. 572; Laws 1957, c. 208, § 1, p. 728; Laws 1969, c. 584, § 48, p. 2374; Laws 1972, LB 1392, § 3; Laws 1985, LB 339, § 14; Laws 1995, LB 1, § 2; Laws 1995, LB 7, § 46; Laws 2000, LB 953, § 3; Laws 2017, LB172, § 16.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-618 Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; Unemployment Trust Fund; investment; bond or insurance.**

(1) The Commissioner of Labor shall designate a treasurer and custodian of the Unemployment Compensation Fund, who shall be selected in accordance with section 48-609. The treasurer shall administer the Unemployment Compensation Fund in accordance with the directions of the commissioner and shall issue his or her warrants upon it in accordance with such rules and regulations as adopted and promulgated by the commissioner. The treasurer shall maintain within the Unemployment Compensation Fund three separate accounts:

(a) A clearing account;

(b) An Unemployment Trust Fund account; and

(c) A benefit account.

(2) All money payable to the Unemployment Compensation Fund, upon receipt by the commissioner, shall be forwarded to the treasurer. The treasurer shall immediately deposit the same in the clearing account or the benefit account to be used to offset future benefit draws from the Unemployment Trust Fund. Transfers of interest on delinquent contributions pursuant to subdivision (1)(b) of section 48-621 and refunds payable pursuant to section 48-660 may be paid from the clearing account upon warrants issued by the treasurer of the Unemployment Compensation Fund under the direction of the commissioner. After clearance, all other money in the clearing account shall be immediately

deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund. The benefit account shall consist of all money requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer under the direction of the commissioner in any bank or public depository in which general funds of the state may be deposited. No public deposit insurance charge or premium shall be paid out of the Unemployment Compensation Fund.

(3) The Unemployment Trust Fund is to be maintained pursuant to section 904 of the Social Security Act, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(4) Any money in the Unemployment Trust Fund available for investment by the State of Nebraska shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The treasurer shall be bonded or insured as required by section 11-201.

**Source:** Laws 1937, c. 108, § 9, p. 387; Laws 1939, c. 56, § 7, p. 243; Laws 1941, c. 94, § 7, p. 395; C.S.Supp.,1941, § 48-709; R.S. 1943, § 48-618; Laws 1947, c. 175, § 5, p. 573; Laws 1955, c. 190, § 4, p. 541; Laws 1978, LB 653, § 11; Laws 1985, LB 339, § 15; Laws 1995, LB 1, § 3; Laws 2000, LB 953, § 4; Laws 2004, LB 884, § 22; Laws 2017, LB172, § 17; Laws 2019, LB359, § 1.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### 48-619 Unemployment Trust Fund; withdrawals.

(1) Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations adopted and promulgated by the Commissioner of Labor, except that money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may be appropriated by the Legislature in accordance with section 903 of the federal Social Security Act for the administration of the Employment Security Law. For such purposes and to the extent required, credits to the account pursuant to section 903 of the federal Social Security Act may be transferred to the Employment Security Administration Fund established in subdivision (1)(a) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts as he or she deems necessary for the payment of benefits for a reasonable future period, not to exceed the amounts standing to this state's account therein. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations.

(2) Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall, at the discretion of the commissioner, either be:

(a) Deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods; or

(b) Redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618.

(3) Any warrant issued for the payment of benefits that is duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the benefit account, except that a substitute warrant may be issued and charged to the benefit account on proper showing at any time within the year next following. A claim for payment of an invalidated warrant not made within one year of original issuance may be presented for payment as a miscellaneous claim under the State Miscellaneous Claims Act. Any charge made to an employer's account pursuant to section 48-652 for any such invalidated benefit warrant shall stand as originally made.

(4) As used in this section, the term warrant shall include a signature negotiable instrument, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the treasurer. The warrant, when it is a dual signature negotiable instrument, shall affect the state's cash balance in the bank when redeemed by the treasurer, not when cashed by a financial institution.

**Source:** Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 244; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-619; Laws 1957, c. 208, § 2, p. 728; Laws 1985, LB 339, § 16; Laws 1995, LB 1, § 4; Laws 2000, LB 953, § 5; Laws 2005, LB 484, § 4; Laws 2017, LB172, § 18; Laws 2019, LB359, § 2.

**Cross References**

State Miscellaneous Claims Act, see section 81-8,294.

**48-620 Unemployment Trust Fund; discontinuance.**

(1) The provisions of sections 48-617 to 48-619, to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes. The separate book account for this state shall also include the state's proportionate share of earnings from the Unemployment Trust Fund, from which no other state is permitted to make withdrawals. If and when the Unemployment Trust Fund ceases to exist or such separate book account is no longer maintained, all money, properties, or securities therein belonging to the Unemployment Compensation Fund of this state shall be transferred to the treasurer of the Unemployment Compensation Fund.

(2) If advances to the Unemployment Trust Fund under Title XII of the federal Social Security Act are necessary, any interest required to be paid on such advances shall be paid in a timely manner and shall not be paid by this



state, directly or indirectly, by an equivalent reduction in state unemployment taxes or otherwise, from amounts in the Unemployment Compensation Fund.

**Source:** Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 245; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-620; Laws 1969, c. 584, § 49, p. 2375; Laws 1984, LB 746, § 1; Laws 1995, LB 7, § 47; Laws 2017, LB172, § 19.

**48-621 Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.**

(1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(a) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money credited to this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary as defined by the specific federal programs, state statutes, and contract obligations for the proper and efficient administration of all programs of the Department of Labor. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such programs shall also be credited to this fund. All money in the Employment Security Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time. Fund balances shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Any money in the Employment Security Administration 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

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent 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. All money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner to

permit substitution for, or a corresponding reduction in, federal funds which, in the absence of such money, would be available to finance expenditures for the administration of the unemployment insurance law. However, nothing in this section shall prevent the money in the Employment Security Special Contingent Fund from being used as a revolving fund to cover necessary and proper expenditures under the law for which federal, state, or contractual funds are owed but have not yet been received. Upon receipt of such funds, covered expenditures shall be charged against such funds. Money in the Employment Security Special Contingent Fund may only be used by the Commissioner of Labor as follows:

(i) To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;

(ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States. No expenditures shall be made from this fund for this purpose except on written authorization by the Governor at the request of the Commissioner of Labor; and

(iii) To be transferred to the Job Training Cash Fund.

(2)(a) Money credited to the account of this state in the Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except:

(i) For the payment of benefits pursuant to section 48-619; and

(ii) For the payment of expenses incurred for the administration of the Employment Security Law and public employment offices. Money requisitioned or used for this purpose must be pursuant to a specific appropriation by the Legislature. Any such appropriation law shall specify the amount and purposes for which the money is appropriated and must be enacted before expenses may be incurred and money may be requisitioned. Such appropriation is subject to the following conditions:

(A) Money may be obligated for a limited period ending not more than two years after the effective date of the appropriation law; and

(B) An obligated amount shall not exceed the aggregate amounts transferred to the account of this state pursuant to section 903 of the Social Security Act less the aggregate of amounts used by this state pursuant to the Employment Security Law and amounts charged against the amounts transferred to the account of this state.

(b) For purposes of subdivision (2)(a)(ii)(B) of this section, amounts appropriated for administrative purposes shall be charged against transferred amounts when the obligation is entered into.

(c) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(d) Money appropriated as provided in this subsection for the payment of administration expenses shall be requisitioned as needed for the payment of obligations incurred under such appropriation. Upon requisition, administration expenses shall be credited to the Employment Security Administration Fund from which such payments shall be made. Money so credited shall, until

expended, remain a part of the Employment Security Administration Fund. If not immediately expended, credited money shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(e) Notwithstanding subdivision (2)(a) of this section, money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the Legislature.

**Source:** Laws 1937, c. 108, § 13, p. 397; Laws 1939, c. 56, § 10, p. 248; Laws 1941, c. 94, § 10, p. 398; C.S.Supp., 1941, § 48-712; R.S. 1943, § 48-621; Laws 1947, c. 175, § 6, p. 574; Laws 1949, c. 163, § 5, p. 421; Laws 1957, c. 208, § 3, p. 729; Laws 1969, c. 584, § 50, p. 2375; Laws 1985, LB 339, § 17; Laws 1989, LB 305, § 4; Laws 1994, LB 1066, § 38; Laws 1995, LB 1, § 5; Laws 1996, LB 1072, § 3; Laws 1999, LB 608, § 2; Laws 2000, LB 953, § 6; Laws 2003, LB 197, § 1; Laws 2012, LB782, § 62; Laws 2012, LB946, § 9; Laws 2017, LB172, § 20; Laws 2019, LB359, § 3.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-622.01 State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.**

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for payment of unemployment insurance benefits. 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, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Cash Fund at the end of each calendar quarter.

(2) The commissioner shall have the authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued

interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Cash Fund.

**Source:** Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2; Laws 2011, LB378, § 23; Laws 2014, LB906, § 16; Laws 2014, LB997, § 1; Laws 2017, LB172, § 21.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-622.02 Nebraska Training and Support Cash Fund; created; use; investment; Administrative Costs Reserve Account; created; use.**

(1) The Nebraska Training and Support Cash Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No expenditures shall be made from the Nebraska Training and Support Cash Fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Cash Fund.

(2) Money in the Nebraska Training and Support Cash Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, operating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Cash Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers of for-profit and not-for-profit businesses, (d) recruitment of workers to Nebraska, (e) training new employees of expanding Nebraska businesses, (f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, (g) developing and conducting labor availability and skills gap studies pursuant to the Sector Partnership Program Act, for which money may be transferred to the Sector Partnership Program Fund as directed by the Legislature, and (h) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) The Administrative Costs Reserve Account is created within the Nebraska Training and Support Cash Fund. Money shall be allocated from the Nebraska Training and Support Cash Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subsection (2) of this section.

(4) The State Treasurer shall transfer two hundred fifty thousand dollars from the Nebraska Training and Support Cash Fund to the Sector Partnership Program Fund no later than July 15, 2016.

**Source:** Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3; Laws 2012, LB911, § 1; Laws 2014, LB997, § 2; Laws 2016, LB1110, § 13; Laws 2017, LB172, § 22.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

Sector Partnership Program Act, see section 48-3401.

**48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.**

(1) There is hereby created the Nebraska Worker Training Board. The board shall consist of seven members appointed and serving for terms determined by the Governor as follows:

- (a) A representative of employers in Nebraska;
- (b) A representative of employees in Nebraska;
- (c) A representative of the public;
- (d) The Commissioner of Labor or a designee;
- (e) The Director of Economic Development or a designee;
- (f) The Commissioner of Education or a designee; and
- (g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) The chairperson of the Nebraska Worker Training Board shall be the representative of the employers in Nebraska.

(3) By July 1 of each year, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Cash Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) By December 31 of each year, the Department of Labor shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

**Source:** Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4; Laws 2014, LB997, § 3; Laws 2017, LB172, § 23; Laws 2019, LB359, § 4; Laws 2020, LB1016, § 1.

Operative date July 25, 2020.

**48-623 Benefits; how paid.**

All benefits provided in the Employment Security Law shall be payable from the Unemployment Compensation Fund. All benefits shall be paid through employment offices in accordance with rules and regulations adopted and promulgated by the Commissioner of Labor.

**Source:** Laws 1937, c. 108, § 3, p. 374; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp., 1941, § 48-703; R.S. 1943, § 48-623; Laws 1985, LB 339, § 19; Laws 2017, LB172, § 24.

**48-624 Benefits; weekly benefit amount; calculation.**

For any benefit year beginning on or after January 1, 2018:

(1) An individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount,

but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02;

(2) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen; and

(3) Any change in the weekly benefit amounts prescribed in this section or in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-624; Laws 1945, c. 114, § 2, p. 371; Laws 1949, c. 163, § 1, p. 423; Laws 1951, c. 157, § 1, p. 630; Laws 1953, c. 168, § 1, p. 541; Laws 1955, c. 190, § 5, p. 542; Laws 1957, c. 209, § 1, p. 738; Laws 1959, c. 229, § 1, p. 802; Laws 1963, c. 291, § 1, p. 870; Laws 1965, c. 286, § 1, p. 819; Laws 1967, c. 299, § 1, p. 814; Laws 1969, c. 401, § 1, p. 1394; Laws 1971, LB 651, § 4; Laws 1972, LB 1391, § 1; Laws 1973, LB 333, § 1; Laws 1974, LB 775, § 1; Laws 1975, LB 475, § 1; Laws 1977, LB 337, § 1; Laws 1979, LB 183, § 1; Laws 1983, LB 524, § 1; Laws 1985, LB 216, § 1; Laws 1987, LB 446, § 1; Laws 1990, LB 315, § 1; Laws 1994, LB 286, § 2; Laws 1998, LB 225, § 1; Laws 2005, LB 739, § 5; Laws 2007, LB265, § 8; Laws 2017, LB172, § 25.

#### **48-625 Benefits; weekly payment; how computed.**

(1) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of section 48-628.02, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

(2) Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801, § 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws

1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8; Laws 2015, LB271, § 5; Laws 2017, LB172, § 26.

**48-626 Benefits; maximum annual amount; determination.**

(1) For any benefit year beginning before October 1, 2018, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under the circumstances under which he or she was or could have been determined disqualified under section 48-628.10 or 48-628.12, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount equal to the number of weeks for which he or she is or would have been disqualified had he or she filed a claim immediately after the separation, multiplied by his or her weekly benefit amount, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under section 48-628.12.

(2) For any benefit year beginning on or after October 1, 2018, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her weekly benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under circumstances under which he or she was or could have been determined disqualified under section 48-628.10 or 48-628.12, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount determined pursuant to subsection (3) of this section, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under section 48-628.12.

(3) For purposes of determining the reduction of benefits described in subsection (2) of this section:

(a) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.12, his or her total benefit amount shall be reduced by:

(i) Two times his or her weekly benefit amount if he or she left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and for which he or she earns wages payable to him or her; or

(ii) Thirteen times his or her weekly benefit amount if he or she left work voluntarily without good cause for any reason other than that described in subdivision (3)(a)(i) of this section; and

(b) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.10, his or her total benefit amount shall be reduced by fourteen times his or her weekly benefit amount.

(4) For purposes of sections 48-623 to 48-626, wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 48-603 or subsection (3) of section 48-661 with respect to becoming an employer.

(5) In order to determine the benefits due under this section and sections 48-624 and 48-625, each employer shall make reports, in conformity with reasonable rules and regulations adopted and promulgated by the commissioner, of the wages of any claimant. If any employer fails to make such a report within the time prescribed, the commissioner may accept the statement of such claimant as to his or her wages, and any benefit payments based on such statement of earnings, in the absence of fraud or collusion, shall be final as to the amount.

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 235; Laws 1941, c. 94, § 2, p. 382; C.S.Supp., 1941, § 48-703; R.S. 1943, § 48-626; Laws 1945, c. 114, § 3, p. 372; Laws 1949, c. 163, § 9, p. 425; Laws 1959, c. 229, § 2, p. 802; Laws 1963, c. 291, § 2, p. 871; Laws 1967, c. 300, § 1, p. 816; Laws 1972, LB 1392, § 4; Laws 1980, LB 800, § 3; Laws 1985, LB 339, § 20; Laws 1986, LB 950, § 3; Laws 1995, LB 1, § 7; Laws 2017, LB172, § 27; Laws 2017, LB203, § 1.

**48-627 Benefits; eligibility conditions; availability for work; requirements.**

An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) He or she has registered for work at an employment office, is actively searching for work, and thereafter reports at an employment office in accordance with such rules and regulations as the commissioner may adopt and promulgate. The commissioner may, by rule and regulation, waive or alter any of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations if the commissioner finds that compliance with such requirements would be oppressive or inconsistent with the purposes of the Employment Security Law;

(2) He or she has made a claim for benefits in accordance with section 48-629;

(3)(a) He or she is able to work and is available for work.

(b) No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she was notified of the vacation at the time of his or her hiring.

(c) An individual who is otherwise eligible shall not be deemed unavailable for work or failing to engage in an active work search solely because such individual is seeking part-time work if the majority of the weeks of work in an



individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week.

(d) Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work.

(e) An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section.

(f) An inmate sentenced to and in custody of a penal or custodial institution shall be considered unavailable for work for purposes of this section;

(4) He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (b) if benefits have been paid with respect thereto, or (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627, 48-627.01, 48-628, and 48-628.02 to 48-628.12, except for the requirements of this subdivision; and

(5) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

**Source:** Laws 1937, c. 108, § 4, p. 376; Laws 1939, c. 56, § 3, p. 235; Laws 1941, c. 94, § 3, p. 383; C.S.Supp., 1941, § 48-704; R.S. 1943, § 48-627; Laws 1945, c. 115, § 3, p. 382; Laws 1949, c. 163, § 10, p. 425; Laws 1953, c. 167, § 6, p. 531; Laws 1955, c. 190, § 6, p. 543; Laws 1957, c. 209, § 2, p. 739; Laws 1959, c. 230, § 1, p. 804; Laws 1961, c. 241, § 1, p. 717; Laws 1963, c. 291, § 3, p. 872; Laws 1963, c. 292, § 1, p. 875; Laws 1971, LB 651, § 5; Laws 1973, LB 372, § 1; Laws 1977, LB 509, § 4; Laws 1981, LB 470, § 2; Laws 1985, LB 339, § 21; Laws 1987, LB 446, § 2; Laws 1987, LB 469, § 1; Laws 1988, LB 1033, § 2; Laws 1995, LB 1, § 8; Laws 1995, LB 240, § 1; Laws 1998, LB 225, § 2; Laws 2005, LB 484, § 5; Laws 2005, LB 739, § 9; Laws 2010, LB1020, § 3; Laws 2017, LB172, § 28; Laws 2017, LB203, § 2.

**48-627.01 Benefits; monetary eligibility; earned wages; adjustment.**

(1) In addition to the requirements of section 48-627, for any benefit year beginning on or after January 1, 2018, an unemployed individual shall be monetarily eligible to receive benefits if the commissioner finds he or she has:

(a) Earned total wages for employment by employers equal to not less than four thousand one hundred forty-five dollars and seventy-four cents within his or her base period. Of such total wages, at least one thousand eight hundred fifty dollars shall have been paid in one quarter in his or her base period and eight hundred dollars shall have been paid in a second quarter of his or her base period; and

(b) Earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year subsequent to filing the claim which establishes the previous benefit year.

(2) Beginning on January 1, 2019, and each January 1 thereafter, the amount which an individual is required to earn within his or her base period under subdivision (1)(a) of this section shall be adjusted annually. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period ending on the previous September 30. If such adjusted amount is not a whole dollar amount, the adjusted amount shall be rounded down to the nearest whole dollar amount.

(3) For purposes of this section:

(a) For the determination of monetary eligibility, wages paid within a base period shall not include wages from any calendar quarter previously used to establish a valid claim for benefits; and

(b) For benefit purposes, wages shall be counted as wages for insured work with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer, by whom such wages were paid, has satisfied the conditions of section 48-603 or subsection (3) of section 48-661 with respect to becoming an employer.

**Source:** Laws 2017, LB172, § 29.

**48-628 Benefits; conditions disqualifying applicant; exceptions.**

(1) An individual shall be disqualified for benefits for any week of unemployment in which the commissioner finds he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work offered him or her, or to return to his or her customary self-employment, if any, and for the twelve weeks immediately thereafter. The total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner.

(2) In determining whether or not any work is suitable for an individual, the commissioner shall consider the following:

(a) The degree of risk involved to the individual's health, safety, and morals;

(b) His or her physical fitness and prior training;

(c) His or her experience and prior earnings;

(d) His or her length of unemployment and prospects for securing local work in his or her customary occupation; and

(e) The distance of the available work from his or her residence.

(3) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such

law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(c) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Notwithstanding any other provisions in this section relating to failure to apply for or a refusal to accept suitable work, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner.

(5) No individual shall be disqualified for refusing to apply for available, full-time work or accept full-time work under subsection (1) of this section solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subsection, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week.

**Source:** Laws 1937, c. 108, § 5, p. 377; Laws 1939, c. 56, § 4, p. 236; C.S.Supp.,1941, § 48-705; R.S.1943, § 48-628; Laws 1945, c. 114, § 4, p. 372; Laws 1955, c. 190, § 7, p. 545; Laws 1961, c. 241, § 2, p. 718; Laws 1965, c. 287, § 1, p. 821; Laws 1967, c. 301, § 1, p. 818; Laws 1969, c. 402, § 1, p. 1395; Laws 1971, LB 651, § 6; Laws 1975, LB 370, § 1; Laws 1976, LB 819, § 1; Laws 1977, LB 509, § 5; Laws 1978, LB 128, § 1; Laws 1979, LB 581, § 3; Laws 1980, LB 800, § 4; Laws 1981, LB 470, § 3; Laws 1982, LB 801, § 2; Laws 1983, LB 248, § 4; Laws 1983, LB 432, § 1; Laws 1984, LB 746, § 2; Laws 1985, LB 339, § 22; Laws 1985, LB 341, § 1; Laws 1987, LB 276, § 1; Laws 1987, LB 469, § 2; Laws 1989, LB 605, § 1; Laws 1991, LB 498, § 1; Laws 1992, LB 878, § 1; Laws 1994, LB 286, § 3; Laws 1994, LB 913, § 1; Laws 1995, LB 1, § 9; Laws 1995, LB 77, § 2; Laws 1995, LB 291, § 1; Laws 1995, LB 759, § 1; Laws 1996, LB 633, § 1; Laws 1998, LB 225, § 3; Laws 2000, LB 953, § 7; Laws 2001, LB 192, § 8; Laws 2002, LB 921, § 2; Laws 2005, LB 484, § 6; Laws 2005, LB 739, § 10; Laws 2010, LB1020, § 4; Laws 2017, LB172, § 30; Laws 2017, LB203, § 3.

**48-628.01 Benefits; disqualification; receipt of other unemployment benefits.**

An individual shall be disqualified for benefits for any week with respect to which, or a part of which, he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States. If the appropriate agency of such other state or of the United

States finally determines that he or she is not entitled to such unemployment benefits, the disqualification provided in this section shall not apply.

**Source:** Laws 2017, LB172, § 31.

**48-628.02 Benefits; disqualification; receipt of other remuneration.**

(1) An individual shall be disqualified for benefits for any week in which he or she is receiving or has received remuneration in the form of:

- (a) Wages in lieu of notice or a dismissal or separation allowance;
- (b) Vacation leave pay, including that received in a lump sum or upon separation from employment;
- (c) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States;
- (d) Retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer; or
- (e) A gratuity or a bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workers' compensation law.

(2) Payments described in subsection (1) of this section that are made in a lump sum shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributed.

(3) Military service-connected disability compensation payable under 38 U.S.C. chapter 11 and primary insurance benefits payable under Title II of the Social Security Act, as amended, or similar payments under any act of Congress shall not be deemed to be disqualifying or deductible from the benefit amount.

(4) No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant.

(5) No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (35)(g) of section 48-602.

(6) No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans' Readjustment Assistance Act of 1952.

**Source:** Laws 2017, LB172, § 32.

**48-628.03 Benefits; disqualification; student.**

(1) An individual shall be disqualified for benefits for any week of unemployment if such individual is a student unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school. Attendance at a school, college, or university for

training purposes, under a plan approved by the commissioner for such individual, shall not be disqualifying.

(2) For purposes of this section, student means an individual who is registered for full-time status at and regularly attends an established school, college, university, training facility, or other educational institution or who is on vacation during or between two successive academic years or terms.

**Source:** Laws 2017, LB172, § 33.

**48-628.04 Benefits; disqualification; alien.**

(1) An individual shall be disqualified for unemployment benefits for any week if the services upon which such benefits are based are performed by an alien. This section shall apply unless such alien:

(a) Is an individual who was lawfully admitted for permanent residence at the time such services were performed;

(b) Was lawfully present for purposes of performing such services; or

(c) Was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5).

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

**Source:** Laws 2017, LB172, § 34.

**48-628.05 Benefits; disqualification; sports or athletic events.**

An individual shall be disqualified for unemployment benefits for any week if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if:

(1) Such week of unemployment begins during the period between two successive sport seasons or similar periods;

(2) Such individual performed such services in the first of such seasons or similar periods; and

(3) There is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

**Source:** Laws 2017, LB172, § 35.

**48-628.06 Benefits; disqualification; educational institution.**

An individual shall be disqualified for benefits for any week of unemployment if claimed benefits are based on services performed:

(1) In an instructional, research, or principal administrative capacity for an educational institution, if:

(a) Such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period;

(b) Such individual performs such services in the first of such academic years or terms; and

(c) There is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, such individual performs such services in the first of such academic years or terms, and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms. If benefits are denied to any individual for any week under this subdivision and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision;

(3) In any capacity described in subdivision (1) or (2) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (1) and (2) of this section. As used in this subdivision, educational service agency means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions;

(4) In any capacity described in subdivision (1) or (2) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified as specified in subdivisions (1), (2), and (3) of this section; and

(5) In any capacity described in subdivision (1) or (2) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

**Source:** Laws 2017, LB172, § 36.

#### **48-628.07 Benefits; training.**

(1) Notwithstanding any other provisions of the Employment Security Law, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1). Such an individual shall not be denied benefits by reason of leaving work to enter such training if the work left is not suitable employment or because of the application to any such week in training of provisions of the Employment Security Law, or any applicable federal

unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, suitable employment means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of such act.

**Source:** Laws 2017, LB172, § 37.

#### **48-628.08 Benefits; disqualification; leave of absence.**

An individual shall be disqualified for benefits for any week during which the individual is on a leave of absence.

**Source:** Laws 2017, LB172, § 38.

#### **48-628.09 Benefits; disqualification; labor dispute.**

(1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises where he or she is or was last employed. This section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work; and

(b) He or she does not belong to a grade or class of workers that includes members who, immediately before the commencement of the stoppage, were employed at the premises where the stoppage occurs and who are participating, financing, or directly interested in the dispute.

(2) If in any case, separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for purposes of this section, be deemed to be a separate factory, establishment, or other premises.

**Source:** Laws 2017, LB172, § 39.

#### **48-628.10 Benefits; disqualification; discharge for misconduct.**

(1) An individual shall be disqualified for benefits for the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks immediately thereafter.

(2) If the commissioner finds that the individual was discharged for misconduct that was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery while the individual is on the worksite or while the individual is engaged in work for the employer, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer.

(3) If the commissioner finds that the individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify

such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct.

**Source:** Laws 2017, LB172, § 40.

**48-628.11 Benefits; disqualification; multiple disqualifications for prohibited acts by employee.**

An individual shall be disqualified for benefits for any week of unemployment benefits or for waiting week credit if he or she has been disqualified from the receipt of benefits pursuant to section 48-663.01 two or more times in the five-year period immediately prior to filing his or her most recent claim. This section shall not apply if the individual has repaid in full all overpayments established in conjunction with the disqualifications assessed under section 48-663.01 during that five-year period.

**Source:** Laws 2017, LB172, § 41.

**48-628.12 Benefits; disqualification; leave work voluntarily without good cause.**

An individual shall be disqualified for benefits:

(1) For any benefit year beginning before October 1, 2018:

(a) For the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for the thirteen weeks immediately thereafter. For purposes of this subdivision, a temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so; or

(b) For the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, if so found by the commissioner, and for the two weeks immediately thereafter. For this subdivision to apply, such work shall:

(i) Be accepted by the individual;

(ii) Offer a reasonable expectation of betterment of wages or working conditions, or both; and

(iii) Enable the individual to earn wages payable to him or her; or

(2) For any benefit year beginning on or after October 1, 2018, for the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for all subsequent weeks until the individual has earned wages in insured work in an amount of at least four times his or her weekly benefit amount and has separated from the most recent subsequent employment under nondisqualifying conditions. For purposes of this subdivision, a temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been



advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so.

**Source:** Laws 2017, LB172, § 42.

**48-628.13 Good cause for voluntarily leaving employment, defined.**

Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

(1) An individual has made all reasonable efforts to preserve the employment but voluntarily leaves his or her work for the necessary purpose of escaping abuse at the place of employment or abuse as defined in section 42-903 between household members;

(2) An individual left his or her employment voluntarily due to a bona fide non-work-connected illness or injury that prevented him or her from continuing the employment or from continuing the employment without undue risk of harm to the individual;

(3) An individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station;

(4) An individual left his or her employment because his or her employer required the employee to relocate;

(5)(a) An individual is a construction worker and left his or her employment voluntarily for the purpose of accepting previously secured insured work in the construction industry if the commissioner finds that:

(i)(A) The quit occurred within thirty days immediately prior to the established termination date of the job which the individual voluntarily leaves, (B) the specific starting date of the new job is prior to the established termination date of the job which the worker quits, (C) the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit, and (D) the worker had worked at least twenty days or more at the new job after the established termination date of the previous job unless the new job was terminated by a contract cancellation; or

(ii)(A) The construction worksite of the job which the worker quit was more than fifty miles from his or her place of residence, (B) the new construction job was fifty or more miles closer to his or her residence than the job which he or she quit, and (C) the worker actually worked twenty days or more at the new job unless the new job was terminated by a contract cancellation.

(b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under section 48-628.10 or 48-628.12;

(6) An individual accepted a voluntary layoff to avoid bumping another worker;

(7) An individual left his or her employment as a result of being directed to perform an illegal act;

(8) An individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age;

(9) An individual left his or her employment because of unsafe working conditions;

(10) An individual left his or her employment to attend school; or

(11) Equity and good conscience demand a finding of good cause.

**Source:** Laws 2005, LB 739, § 7; R.S.1943, (2010), § 48-628.01; Laws 2017, LB172, § 43.

**48-628.14 Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.**

(1) As used in the Employment Security Law, unless the context otherwise requires:

(a) Extended benefit period means a period which begins with the third week after a week for which there is a state “on” indicator and ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is a state “off” indicator or (ii) the thirteenth consecutive week of such period, except that no extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(b) Extended benefits means benefits, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, payable to an individual for weeks of unemployment in his or her eligibility period;

(c) Eligibility period of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any other provision of the Employment Security Law, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual’s weekly benefit amount for extended benefits;

(d) Exhaustee means an individual who, with respect to any week of unemployment in his or her eligibility period:

(i)(A) Has received, prior to such week, all of the regular benefits that were available to him or her under the Employment Security Law of this state or under the unemployment insurance law of any other state, including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85, in his or her current benefit year that includes such week, except for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him or her although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (B) his or her benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employment on the basis of which he or she could establish a new benefit year that would include such week;

(ii) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(iii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law, he or she is considered an exhaustee;

(e) Rate of insured unemployment means the percentage, used by the commissioner in determining whether there is a state “on” or state “off” indicator, derived by dividing (i) the average weekly number of individuals filing claims for regular compensation under the Employment Security Law for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by (ii) the average monthly employment covered under the Employment Security Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(f) Regular benefits means benefits payable to an individual under the Employment Security Law of this state or under the unemployment insurance law of any other state, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, other than extended benefits;

(g) State “off” indicator means a week for which the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, neither subdivision (1)(h)(i) or (1)(h)(ii) of this section was satisfied; and

(h) State “on” indicator means a week for which the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the Employment Security Law: (i) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent or (ii) equaled or exceeded six percent.

(2) Except when the result would be inconsistent with the other provisions of this section, as provided in the rules and regulations of the commissioner, the provisions of the Employment Security Law which apply to claims for or payment of regular benefits shall apply to claims for and payment of extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week:

(a) Such individual is an exhaustee;

(b) Such individual has satisfied the requirements of the Employment Security Law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) Sections 48-628.15 and 48-628.16 do not apply; and

(d) Such individual has been paid wages for insured work during the individual's base period equal to at least one and one-half times the wages paid in that calendar quarter of the individual's base period in which such wages were highest.

(3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year. The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him or her under the Employment Security Law in his or her applicable benefit year; or

(b) Thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law for a week of total unemployment in the applicable benefit year.

(4) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the commissioner shall make an appropriate public announcement. Computations required to determine the rate of insured unemployment shall be made by the commissioner in accordance with regulations prescribed by the United States Secretary of Labor. Any amount of extended benefits payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(5) Notwithstanding any other provision of the Employment Security Law, during an extended benefit period, the Governor may provide for the payment of emergency unemployment compensation pursuant to Public Law 110-252, as amended, or any substantially similar federal unemployment compensation paid entirely from federal funds to individuals prior to the payment of extended benefits pursuant to this section and sections 48-628.15 and 48-628.16.

**Source:** Laws 1971, LB 651, § 7; Laws 1972, LB 1392, § 5; Laws 1977, LB 509, § 6; Laws 1979, LB 581, § 4; Laws 1981, LB 470, § 4; Laws 1982, LB 801, § 3; Laws 1984, LB 746, § 3; Laws 1985, LB 339, § 23; Laws 2010, LB1055, § 1; R.S.1943, (2010), § 48-628.02; Laws 2017, LB172, § 44.

**48-628.15 Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.**

(1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period (a) he or she failed to accept any offer of suitable work or failed to apply for any suitable work to which he or she was referred by the commissioner or (b) he or she failed to actively engage in seeking work as prescribed under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she (a) has been employed in each of four subsequent weeks,

whether or not consecutive, and (b) has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For purposes of this section, the term suitable work means, with respect to any individual, any work which is within such individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of the individual's average weekly benefit amount payable to him or her during his or her applicable benefit year, plus the amount, if any, of supplemental unemployment compensation benefits as defined in section 501(c)(17)(D) of the Internal Revenue Code payable to such individual for such week. Such work must also pay wages equal to the higher of the federal minimum wage or the applicable state or local minimum wage. No individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability contained in this subsection if (a) the position was not offered to such individual in writing or was not listed with the employment service, (b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 48-628, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection, or (c) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section 48-628 without regard to the definition specified by this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth under subsection (3) of section 48-628, nor shall an individual be denied benefits if such benefits would not be deniable by reason of subsection (4) of section 48-628.

(5) For the purposes of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if the individual has engaged in a systematic and sustained effort to obtain work during such week and the individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(6) The state employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for benefits under section 48-628, 48-628.10, or 48-628.12 unless such individual has earned wages for services performed in subsequent employment in an amount not less than four hundred dollars.

**Source:** Laws 1981, LB 470, § 5; Laws 1982, LB 801, § 4; Laws 1993, LB 47, § 1; Laws 1995, LB 1, § 10; Laws 1995, LB 574, § 53; Laws 2000, LB 953, § 8; Laws 2010, LB1055, § 2; R.S.1943, (2010), § 48-628.03; Laws 2017, LB172, § 45.

**48-628.16 Extended benefits; payments not required; when.**

(1) Except as provided in subsection (2) of this section, payment of extended benefits shall not be made to any individual for any week if (a) extended

benefits would, but for this section, have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and (b) an extended benefit period is not in effect for such week in such state.

(2) Subsection (1) of this section shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this section, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the benefit year.

**Source:** Laws 1981, LB 470, § 6; R.S.1943, (2010), § 48-628.04; Laws 2017, LB172, § 46.

**48-628.17 Additional unemployment benefits; conditions; amount; when benefits payable.**

(1) In addition to any other unemployment benefits to which an individual is entitled under the Employment Security Law, an individual who has exhausted all regular unemployment benefits for which he or she has been determined eligible shall continue to be eligible for up to twenty-six additional weeks of unemployment benefits if such individual:

(a)(i) Was involuntarily separated from employment as a result of a permanent reduction of operations at the individual's place of employment or (ii) is unemployed as the result of a separation from a declining occupation;

(b) Is enrolled and making satisfactory progress in a (i) training program approved for him or her by the commissioner or (ii) job training program authorized under the federal Workforce Innovation and Opportunity Act, as amended;

(c) Is receiving training which is preparing the individual for entry into a high-demand occupation;

(d) Is enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. Individuals shall be notified of the enrollment requirement at the time of their initial determination of eligibility for regular benefits; and

(e) Is not receiving similar stipends or other training allowances for nontraining costs. Similar stipend means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(2) The amount of unemployment benefits payable to an individual for a week of unemployment under this section shall be equal to the amount of unemployment benefits which he or she has been determined eligible for under section 48-624 less any deductions or offsets authorized under the Employment Security Law.

(3) If an individual begins to receive unemployment benefits under this section while enrolled in a training program described in subsection (1) of this section during a benefit year, such individual shall continue to receive such benefits so long as he or she continues to make satisfactory progress in such training program, except that such benefits shall not exceed twenty-six times the individual's weekly benefit amount for the most recent benefit year as determined under section 48-624.

(4) No benefits shall be payable under this section until the individual has exhausted all (a) regular unemployment benefits, (b) extended benefits as defined in subdivision (1)(b) of section 48-628.14, and (c) unemployment benefits paid entirely from federal funds to which he or she is entitled, including, but not limited to, trade readjustment assistance, emergency unemployment compensation, or other similar federally funded unemployment benefits.

(5) For purposes of this section, regular unemployment benefits means all unemployment benefits for which an individual is eligible payable under sections 48-624 to 48-626, extended unemployment benefits payable under section 48-628.14, and any unemployment benefits funded solely by the federal government.

**Source:** Laws 2010, LB1020, § 5; R.S.1943, (2010), § 48-628.05; Laws 2017, LB172, § 47.

#### **48-629 Claims; rules and regulations for filing.**

Claims for benefits shall be made in accordance with such rules and regulations as the commissioner may adopt and promulgate. Each employer shall post and maintain printed statements of such rules and regulations in places readily accessible to individuals in his or her service and shall make available to each such individual, at the time he or she becomes unemployed, a printed statement of such rules and regulations. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

**Source:** Laws 1937, c. 108, § 6, p. 378; Laws 1941, c. 94, § 4, p. 384; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-629; Laws 1985, LB 339, § 24; Laws 2017, LB172, § 48.

#### **48-629.01 Claims; advisement to claimant; amounts deducted; how treated.**

(1) An individual filing a new claim for unemployment compensation shall, at the time of the filing of such claim, be advised that:

- (a) Unemployment compensation is subject to federal and state income tax;
- (b) Requirements exist pertaining to estimated tax payments;
- (c) The individual may elect to have federal income tax withheld from the individual's payment of unemployment compensation at the amount specified in the Internal Revenue Code;
- (d) The individual may elect to have state income tax withheld from the individual's payment of unemployment compensation at the rate of five percent; and
- (e) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation for federal income tax purposes shall remain in the Unemployment Compensation Fund until transferred to the federal Internal Revenue Service as a payment of income tax. Amounts deducted and withheld from unemployment compensation for state income tax purposes shall remain in the Unemployment Compensation Fund until transferred to the Department of Revenue as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be withheld under the Employment Security Law.

**Source:** Laws 1996, LB 1072, § 2; Laws 2017, LB172, § 49.

**48-630 Claims; determinations by adjudicator.**

(1) A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as an adjudicator.

(2) A determination shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under section 48-627.01, and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Whenever any claim involves the application of the provisions of section 48-628.09, the adjudicator shall promptly transmit his or her full findings of fact, with respect to such section, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he or she may require, shall affirm, modify, or set aside such findings of fact and transmit to the adjudicator a decision upon the issue involved under such section, which shall be deemed to be the decision of the adjudicator. All claims arising out of the same alleged labor dispute may be considered at the same time.

(3) In the event a claim is denied, a determination shall state the reasons therefor. Regardless of the outcome, the parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless an appeal is filed with the department in the manner prescribed in section 48-634.

(4) Any benefits for which a claimant has been found eligible shall not be withheld because of an appeal filed under section 48-634, and such benefits shall be paid until a hearing officer has rendered a decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which he or she had been found not entitled, under a redetermination or decision pursuant to sections 48-630 to 48-638, shall be treated as erroneous payments in accordance with section 48-665.

**Source:** Laws 1937, c. 108, § 6, p. 379; Laws 1941, c. 94, § 4, p. 384; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-630; Laws 1969, c. 403, § 1, p. 1399; Laws 1972, LB 1392, § 6; Laws 1985, LB 338, § 1; Laws 1995, LB 1, § 11; Laws 1995, LB 240, § 2; Laws 2012, LB1058, § 1; Laws 2017, LB172, § 50.

**48-631 Claims; redetermination; time; notice; appeal.**

(1) The adjudicator may reconsider a determination if he or she finds that:



(a) An error in computation or identity has occurred in connection with the determination;

(b) Wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered; or

(c) Benefits have been allowed or denied or the amount of benefits has been set based on misrepresentations of fact.

(2) No such redetermination shall be made after two years from the date of the original determination.

(3) Notice of any redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination.

(4) If the amount of benefits is increased or decreased by a redetermination, an appeal therefrom may be filed solely with respect to the matters involved in such increase or decrease in the manner and subject to the limitations provided in section 48-634. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determination, in any case in which the final decision has been rendered by a hearing officer or a court, and may apply to the hearing officer or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination is issued, such appeal, unless withdrawn, shall be treated as an appeal of the redetermination.

**Source:** Laws 1941, c. 94, § 4, p. 385; C.S.Supp., 1941, § 48-706; R.S. 1943, § 48-631; Laws 1961, c. 238, § 5, p. 711; Laws 2011, LB11, § 1; Laws 2017, LB172, § 51.

**48-632 Claims; determination; notice; persons entitled; employer; rights; duties.**

(1) Notice of a determination upon a claim shall be promptly given to the claimant by electronic notice or by mailing such notice to his or her last-known address. A claimant shall elect to receive either electronic notice or mailed notice when he or she files a new claim or establishes a new benefit year. A claimant may change his or her election at any time. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer from whom the claimant received wages on or after the first day of the base period for his or her most recent claim if such employer has indicated prior to the determination, in such manner as required by rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law. An employer shall provide information to the department in respect to the request for information within ten days after the mailing or electronic transmission of a request.

(2) If the employer provided information pursuant to subsection (6) of section 48-652 on the claim establishing the previous benefit year but did not receive a determination because of no involvement of base period wages and there are wages from that employer in the base period for the most recent claim, the employer shall be provided the opportunity to provide new information that such individual may be ineligible or disqualified under any provision of the Employment Security Law on the current claim. This subsection shall not apply

to employers who did not receive a determination because the separation was determined to result from a lack of work.

(3) If an employer fails to provide information to the department within the time period specified in subsection (1) of this section, the employer shall forfeit any appeal rights otherwise available pursuant to section 48-634.

**Source:** Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-632; Laws 1985, LB 339, § 25; Laws 2012, LB1058, § 2; Laws 2017, LB172, § 52; Laws 2017, LB203, § 4.

**48-633 Repealed. Laws 2012, LB 1058, § 17.**

**48-634 Administrative appeal; notice; time allowed; hearing; parties.**

(1) The claimant or any other party entitled to notice of a determination as provided in section 48-632 may file an appeal from such determination with the department.

(2) An appeal must be in writing or in accordance with rules and regulations adopted and promulgated by the commissioner and must be delivered and received within twenty days after the date of mailing of the notice of determination to the parties' last-known address or, if such notice is not mailed, after the date of delivery of such notice of determination, except that for good cause shown an appeal filed outside the prescribed time period may be heard.

(3) In accordance with section 303 of the federal Social Security Act, 42 U.S.C. 503, the commissioner shall provide the opportunity for a fair hearing before an impartial hearing officer on each appeal.

(4) Unless the appeal is withdrawn, a hearing officer, after affording the parties reasonable opportunities for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination.

(5) If an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, a hearing officer shall give special notice of such issue and of the pendency of the appeal to the employer and to the commissioner, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question.

(6) The parties shall be promptly notified of a hearing officer's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

(7) The commissioner shall be a party entitled to notice in any proceeding involving a claim for benefits before a hearing officer.

**Source:** Laws 1941, c. 94, § 4, p. 386; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-634; Laws 1979, LB 328, § 1; Laws 1995, LB 239, § 1; Laws 2001, LB 192, § 10; Laws 2012, LB1058, § 3; Laws 2017, LB172, § 53.

**48-635 Administrative appeals; procedure; rules of evidence; record.**

(1) The presentation of disputed claims and the conduct of hearings and appeals shall be in accordance with the rules and regulations adopted and promulgated by the commissioner for determining the rights of the parties,

whether or not such rules and regulations conform to common-law or statutory rules of evidence and other technical rules of procedure.

(2) A full and complete record shall be kept of all proceedings in connection with the disputed claims.

(3) All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

**Source:** Laws 1937, c. 108, § 6, p. 380; Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-635; Laws 1985, LB 339, § 26; Laws 2017, LB172, § 54.

#### **48-636 Administrative appeals; decisions; conclusiveness.**

Except insofar as reconsideration of any determination is had under sections 48-630 to 48-632, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal which has become final, shall be conclusive for all the purposes of the Employment Security Law as between the Commissioner of Labor, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in sections 48-634 to 48-644, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the purposes of such law and shall not be subject to collateral attack by any employer.

**Source:** Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-636; Laws 1953, c. 167, § 7, p. 533; Laws 1985, LB 339, § 27; Laws 2012, LB1058, § 4.

#### **48-637 Administrative appeals; decisions; effect in subsequent proceedings; certification of questions.**

The final decisions of a hearing officer and the principles of law declared by him or her in arriving at such decisions, unless expressly or impliedly overruled by a later decision of a hearing officer or by a court of competent jurisdiction, shall be binding upon the commissioner and any adjudicator in subsequent proceedings which involve similar questions of law, except that if in connection with any subsequent proceeding the commissioner or an adjudicator has serious doubt as to the correctness of any principle so declared, he or she may certify his or her findings of fact in such case together with the question of law involved to a hearing officer who, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceedings, shall thereupon certify to the commissioner, such adjudicator, and such parties his or her answer to the question submitted. If the question thus certified to a hearing officer arises in connection with a claim for benefits, a hearing officer in his or her discretion may remove to himself or herself the entire proceedings on such claim and, after proceeding in accordance with the requirements of sections 48-634 to 48-643 with respect to proceedings before a hearing officer, shall render his or her decision upon the entire claim.

**Source:** Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-637; Laws 2012, LB1058, § 5; Laws 2017, LB172, § 55.

#### **48-638 Appeal to district court; procedure.**

(1) Any party to the proceedings before a hearing officer may appeal the hearing officer's decision by filing a petition (a) in the district court of the county in which the individual claiming benefits claims to have been last employed or in which such claimant resides, (b) in any district court of this state upon which the parties may agree, or (c) if neither subdivision (1)(a) or (b) of this section applies, then in the district court of Lancaster County.

(2) If the commissioner is not the petitioning party, he or she shall be a party defendant in every appeal. Such appeal shall otherwise be governed by the Administrative Procedure Act.

(3) An appeal may be taken from the decision of the district court to the Court of Appeals in accordance with the Administrative Procedure Act.

(4) No bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court upon such review. Costs which would be otherwise taxed to a claimant shall be taxed in such courts to the commissioner regardless of the result of the action unless justice and equity otherwise require. Notwithstanding any general statute to the contrary, no filing fee shall be charged by a hearing officer or by the clerk of any court for any service required by sections 48-634 to 48-638.

(5) In any proceeding for judicial review pursuant to this section, the commissioner may be represented by any qualified attorney employed and designated by the commissioner for that purpose or, at the commissioner's request, by the Attorney General.

**Source:** Laws 1941, c. 94, § 4, p. 388; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-638; Laws 1945, c. 115, § 4, p. 384; Laws 1957, c. 208, § 4, p. 731; Laws 1979, LB 328, § 2; Laws 1986, LB 950, § 4; Laws 1988, LB 352, § 85; Laws 1996, LB 1072, § 4; Laws 2017, LB172, § 56.

#### Cross References

Administrative Procedure Act, see section 84-920.

**48-640 Repealed. Laws 2017, LB172, § 89.**

**48-641 Repealed. Laws 2017, LB172, § 89.**

**48-642 Repealed. Laws 2017, LB172, § 89.**

**48-643 Witnesses; fees.**

Witnesses subpoenaed pursuant to sections 48-629 to 48-644 shall be allowed fees at a rate fixed by the commissioner, not to exceed the amount allowed for witness fees in district court. Such fees shall be deemed an expense of administering the Employment Security Law.

**Source:** Laws 1937, c. 108, § 6, p. 380; Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-643; Laws 1985, LB 339, § 29; Laws 2017, LB172, § 57.

#### Cross References

For witness fees in district court, see section 33-139.

**48-644 Benefits; payment; appeal not a supersedeas; reversal; effect.**

(1) Benefits shall be promptly paid in accordance with a determination or redetermination.

(2) If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal.

(3) The commencement of a proceeding for judicial review pursuant to section 48-638 shall not operate as a supersedeas or stay.

(4) If an employer is otherwise entitled to noncharging of benefits pursuant to sections 48-630 and 48-652, and a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits paid pursuant to the erroneous determination, and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

**Source:** Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-644; Laws 1972, LB 1392, § 7; Laws 2012, LB1058, § 6; Laws 2017, LB172, § 58.

**48-645 Benefits; waiver, release, and deductions void; discrimination in hire or tenure unlawful; penalty.**

(1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under the Employment Security Law shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under such law from such employer, shall be void.

(3) No employer shall:

(a) Directly or indirectly make, require, or accept any deduction from wages to finance the employer's contributions required from him or her;

(b) Require or accept any waiver of any right hereunder by any individual in his or her employ;

(c) Discriminate in regard to the hiring, rehiring, or tenure of work of any individual on account of any claim made by such individual for benefits under the Employment Security Law; or

(d) Obstruct or impede the filing of claims for benefits in any manner.

(4) Any employer, officer, or agent of an employer who violates any provision of this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1937, c. 108, § 15, p. 399; Laws 1941, c. 94, § 11, p. 399; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-645; Laws 1977, LB 40, § 292; Laws 1985, LB 339, § 30; Laws 2017, LB172, § 59.

**48-646 Repealed. Laws 2017, LB172, § 89.**

**48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.**

(1)(a) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for

the collection of all debts, except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed.

(b) Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void. Such right or claim to contributions or money shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt.

(c) Any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld if such agreement is submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the hearing; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the Department of Health and Human Services determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy a debt of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in 7 U.S.C. 2022(c)(1) as such section existed on January 1, 2017, of Supplemental Nutrition Assistance Program benefits, if not otherwise known or disclosed to the state Supplemental Nutrition Assistance Program agency. The commissioner shall notify the state Supplemental Nutrition Assistance Program agency enforcing such obligation of any individual disclosing that he or she owes an uncollected overissuance whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

(i) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection;

(ii) The amount, if any, determined pursuant to an agreement submitted to the state Supplemental Nutrition Assistance Program agency under 7 U.S.C. 2022(c)(3)(A), as such section existed on January 1, 2017; or

(iii) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. 2022(c)(3)(B), as such section existed on January 1, 2017.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state Supplemental Nutrition Assistance Program agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated as if it were paid to the individual as unemployment



compensation and paid by such individual to the state Supplemental Nutrition Assistance Program agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state Supplemental Nutrition Assistance Program agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state Supplemental Nutrition Assistance Program agency.

**Source:** Laws 1937, c. 108, § 15, p. 400; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB296, § 217; Laws 2009, LB288, § 15; Laws 2017, LB172, § 60.

#### Cross References

Administrative Procedure Act, see section 84-920.

**48-648 Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.**

(1) With respect to wages for employment, combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe. Such combined tax shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would create a hardship for the employer.

(3) In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(4) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(5) The professional employer organization shall report and pay combined tax, penalties, and interest owed for wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed for wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

(6) The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would create a hardship for the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7; Laws 2009, LB631, § 5; Laws 2015, LB271, § 6; Laws 2017, LB172, § 61.

**48-648.01 Repealed. Laws 2017, LB172, § 89.**

**48-648.02 Wages, defined.**

(1) For tax years beginning before January 1, 2020, as used in sections 48-648 and 48-649 to 48-649.04 only, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds nine thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

(2) For tax years beginning on or after January 1, 2020, as used in sections 48-648 and 48-649 to 48-649.04 only:

(a) Except as to employers assigned to category twenty under section 48-649.03, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds nine thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; and

(b) For employers assigned to category twenty under section 48-649.03, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds twenty-four thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

**Source:** Laws 2005, LB 739, § 6; Laws 2017, LB172, § 62; Laws 2019, LB428, § 1.

#### **48-649 Combined tax rate.**

The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account in accordance with sections 48-649.01 to 48-649.04.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB265, § 9; Laws 2009, LB631, § 7; Laws 2017, LB172, § 63.

#### **48-649.01 State unemployment insurance tax rate.**

(1) By December 1 of each calendar year, the commissioner shall determine the state unemployment insurance tax rate for the following year based on information available through the department. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year; or

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year.

(2) If the state unemployment insurance tax rate is determined to be zero percent pursuant to subsection (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate.

(3) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

**Source:** Laws 2017, LB172, § 64.

**48-649.02 Employer's combined tax rate before benefits have been payable.**

(1) Until benefits have been payable from and chargeable to an employer's experience account throughout the preceding four calendar quarters and wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods, the employer's combined tax rate shall be:

(a) For employers not engaged in the construction industry, the lesser of the value of the state's average combined tax rate as determined pursuant to section 48-649.03 or two and five-tenths percent; and

(b) For employers engaged in the construction industry, the value of the category twenty rate determined pursuant to section 48-649.03.

(2) In no event shall the combined tax rate under subsection (1) of this section be less than one and twenty-five hundredths percent.

(3) For any employer who has not paid wages for employment during each of the two preceding four-calendar-quarter periods ending on September 30, but has paid wages for employment in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(a) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(b) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

**Source:** Laws 2017, LB172, § 65.

**48-649.03 Employer's combined tax rate once benefits payable from experience account; experience factor.**

(1) Once benefits have been payable from and chargeable to an employer's experience account throughout the preceding four calendar quarters and wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods, the employer's combined tax rate shall be calculated according to this section. The combined tax rate shall be based upon the employer's experience rating record and determined from the employer's reserve ratio.

(2) The employer's reserve ratio is the percent obtained by dividing (a) the amount by which the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during

the same period, by (b) the employer’s average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer’s average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions were payable.

(3) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio, with category one assigned to accounts with the highest reserve ratios and category twenty assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state’s total taxable payroll, except that:

(a) Any employer with a portion of its taxable wages falling into two consecutive categories shall be assigned to the lower category;

(b) No employer with a reserve ratio calculated to five decimal places equal to the similarly calculated reserve ratio of another employer shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and

(c) No employer with a positive experience account balance shall be assigned to category twenty.

(4) The state's reserve ratio shall be calculated annually by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, plus any amount of combined tax owed by employers eligible for and electing annual payment status for the four most recent quarters ending on September 30 in accordance with rules and regulations adopted by the commissioner, by the state's total wages from the four calendar quarters ending on September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subsection to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	=	Yield Factor
1.45 percent and above	=	0.70
1.30 percent up to but not including 1.45	=	0.75
1.15 percent up to but not including 1.30	=	0.80
1.00 percent up to but not including 1.15	=	0.90
0.85 percent up to but not including 1.00	=	1.00
0.70 percent up to but not including 0.85	=	1.10
0.60 percent up to but not including 0.70	=	1.20
0.50 percent up to but not including 0.60	=	1.25
0.45 percent up to but not including 0.50	=	1.30
0.40 percent up to but not including 0.45	=	1.35
0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

The commissioner may adjust the yield factor determined pursuant to the preceding table to a lower scheduled yield factor if the state's reserve ratio is 1.00 percent or greater. Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(5) The average combined tax rate is assigned to rate category twelve as established in subsection (3) of this section. Rates for each of the remaining

nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(6) In addition to required contributions, an employer may make voluntary contributions to the fund to be credited to his or her account. Voluntary contributions by employers may be made up to the amount necessary to qualify for one rate category reduction. Voluntary contributions received after January 10 shall not be used in rate calculations for the same calendar year.

(7) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured.

**Source:** Laws 2017, LB172, § 66; Laws 2019, LB359, § 5.

**48-649.04 State or political subdivision; combined tax; election to make payments in lieu of contributions.**

(1) The state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed shall be required to pay combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than thirty days after such employer becomes subject to this section to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer.

(2) Eligible employers electing to make payments in lieu of contributions shall not be liable for combined tax payments.

(3) The commissioner, after the end of each calendar quarter, shall notify any such employer that has elected to make payments in lieu of contributions of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(4) Any employer which makes an election in accordance with this section to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective. Any such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year. Upon termination of the election, such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

(5) The commissioner may require any employer subject to this section whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to pay the amount owed pursuant to this section by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment by an electronic method would create a hardship for the employer.

**Source:** Laws 2017, LB172, § 67.

**48-650 Combined tax rate; determination of employment; notice; review; redetermination; proceedings; appeal.**

The commissioner shall determine the rate of combined tax applicable to each employer pursuant to sections 48-649 to 48-649.04 and may determine, at any time during the year, whether services performed by an individual were employment or for an employer. Any such determination shall become conclusive and binding upon the employer unless, within thirty days after the prompt mailing of notice thereof to his or her last-known address or in the absence of mailing within thirty days after the delivery of such notice, the employer files an appeal with the department in accordance with rules and regulations adopted and promulgated by the commissioner. No employer shall have standing, in any proceeding involving his or her combined tax rate or combined tax liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 48-629 to 48-644 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her and only in the event that he or she was not a party to such determination, redetermination, or decision or to any other proceedings under the Employment Security Law in which the character of such services was determined. A full and complete record shall be kept of all proceedings in connection with such hearing. All testimony at any such hearing shall be recorded but need not be transcribed unless there is a further appeal. The employer shall be promptly notified of a hearing officer's decision which shall become final unless the employer or the commissioner appeals within thirty days after the date of service of the decision of the hearing officer. The appeal shall otherwise be governed by the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, § 5, p. 391; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-650; Laws 1985, LB 339, § 35; Laws 1985, LB 342, § 1; Laws 1988, LB 352, § 88; Laws 1994, LB 1337, § 9; Laws 2001, LB 192, § 11; Laws 2017, LB172, § 68.

**Cross References**

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

**48-651 Employer's account; benefit payments; notice; effect.**

(1) The commissioner may provide for the following by rule and regulation:

(a) Periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts; and

(b) Notification to all base period employers of any individual of the establishment of such individual's benefit year.

(2) Any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commissioner may pre-



scribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the commissioner's findings of fact in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the combined tax rate of any employer for any calendar year.

**Source:** Laws 1941, c. 94, § 5, p. 392; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-651; Laws 1985, LB 339, § 36; Laws 1994, LB 1337, § 10; Laws 2017, LB172, § 69.

**48-652 Employer's experience account; reimbursement account; combined tax; liability; termination; reinstatement.**

(1)(a) A separate experience account shall be established for each employer who is liable for payment of combined tax. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account, and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall adopt and promulgate such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if:

(i) Such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.13, (D) left

work from which he or she was discharged for misconduct connected with his or her work, (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.13, or (F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.17; and

(ii) The employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations adopted and promulgated by the commissioner.

(b) No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(c) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of section 48-627.01.

(d) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall adopt and promulgate rules and regulations determining the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period.

(4)(a) An employer's experience account shall be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because one or more of the owners, officers, partners, or limited liability company members or the majority stockholder entered the armed forces of the United States, or of any of its allies, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if:

(i) The employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account;

(ii) The employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account; and

(iii) The commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. In no case shall the payment of benefits to an individual be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6)(a) For benefit years beginning before September 3, 2017, if an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations adopted and promulgated by the commissioner.

(b) For benefit years beginning on or after September 3, 2017, if an individual's base period wage credits represent part-time employment for an employer and the employer continues to employ the individual to the same extent as during the base period, then the employer's experience account, in the case of a contributory employer, or the employer's reimbursement account, in the case of a reimbursable employer, shall not be charged if the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

(7) If a contributory employer responds to the department's request for information within the time period set forth in subsection (1) of section 48-632 and provides accurate information as known to the employer at the time of the response, the employer's experience account shall not be charged if the individual's separation from employment is voluntary and without good cause as determined under section 48-628.12.

**Source:** Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB 265, § 10; Laws 2008, LB 500, § 1; Laws 2009, LB 631, § 8; Laws 2010, LB 1020, § 6; Laws 2012, LB 1058, § 7; Laws 2017, LB 172, § 70; Laws 2017, LB 519, § 1; Laws 2019, LB 359, § 6.

**48-654 Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.**

(1) Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets of another employer shall immediately notify the commissioner of the acquisition and may, pursuant to rules and regulations adopted and promulgated by the commissioner, assume the position of such acquired employer with respect to the resources and liabilities of such acquired employer's experience account as if no change with respect to such acquired employer's experience account has occurred.

(2) The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only where an employer has transferred at any time a definable and segregable portion of his or her payroll and business to a transferee-employer.

(3) For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for four calendar quarters ending September 30 preceding the computation date.

**Source:** Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339, § 38; Laws 2005, LB 484, § 10; Laws 2009, LB631, § 9; Laws 2015, LB271, § 8; Laws 2017, LB172, § 71.

**48-654.01 Employer's experience account; transferable; when; violation; penalty.**

(1) For purposes of this section:

(a) Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibition involved;

(b) Person means an individual, a partnership, a limited liability company, a corporation, or any other legally recognized entity;

(c) Trade or business includes the employer's workforce; and

(d) Violates or attempts to violate includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of law, the following shall apply regarding assignment of combined tax rates and transfer of an employer's experience account:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the employer's experience account attributable to the transferred trade or business shall be transferred to the employer to whom such business is transferred. The rates of both employers shall be recalculated in accordance with section 48-654. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. If, following a transfer of experience under this subdivision, the commissioner determines that a substan-

tial purpose of the transfer of trade or business was to obtain a lower combined tax rate, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account; or

(b) Whenever a person is not an employer at the time it acquires the trade or business of an employer, the employer's experience account of the acquired business shall not be transferred to such person if the commissioner finds that the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate. Instead, such person shall be assigned the new employer combined tax rate under sections 48-649 and 48-649.02. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate, the commissioner shall use objective factors which may include:

- (i) The cost of acquiring the business;
- (ii) Whether the person continued the business enterprise of the acquired business;
- (iii) How long such business enterprise was continued; or
- (iv) Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(3)(a) If a person knowingly violates or attempts to violate this section, or if a person knowingly advises another person in a way that results in a violation of this section and:

(i) The person is an employer, such employer shall be assigned the highest combined tax rate assignable under sections 48-649 to 48-649.04 for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such rate year. However, if the person's business is already at the highest combined tax rate or if the amount of increase in the combined tax rate would be less than two percent, then a penalty combined tax rate of two percent of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year; or

(ii) The person is not an employer, such person shall be subject to a civil penalty of not more than five thousand dollars.

(b) In addition to any civil penalties that may apply under this subsection, such person shall be guilty of a Class IV felony.

(4) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of evading combined tax liability.

**Source:** Laws 2005, LB 484, § 11; Laws 2017, LB172, § 72.

**48-655 Combined taxes; payments in lieu of contributions; collections; set-offs; interest; actions; setoff against federal income tax refund; procedure.**

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest

collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action, (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209, or (c) as provided in subsection (2) of this section. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a liable party's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the liable party's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB631, § 10; Laws 2012, LB1058, § 8; Laws 2017, LB172, § 73.

**48-656 Combined taxes; report or return; requirements; assessment; notice; protest; penalty.**

(1) If any employer fails to file a report or return required by the commissioner for the determination of combined taxes, the commissioner may make such reports or returns or cause them to be made and determine the combined taxes payable, on the basis of such information as he or she may be able to obtain, and shall collect the combined taxes as determined together with any interest thereon due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing, by registered or certified mail, in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by a hearing officer upon written request therefor. After the hearing, the hearing officer shall immediately notify the employer in writing of

his or her decision, and the assessment, if any, shall be final upon issuance of such notice.

(2) If any employer files a report or return required by the commissioner for the determination of combined taxes but fails to pay all or some part of the combined taxes actually due for the reported period, the commissioner may determine the combined taxes actually payable on the basis of such information as he or she may be able to obtain and shall collect the combined taxes as determined together with any interest due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing by registered or certified mail in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by a hearing officer upon a written request therefor. After the hearing, the hearing officer shall immediately notify the employer in writing of his or her decision and the assessment, if any, shall be final upon issuance of such notice.

(3) Any employer or any officer or agent of an employer who fails to file a required quarterly combined tax report and wage schedule by the tenth day of the second month following the end of the calendar quarter shall pay a penalty to the commissioner of one-tenth of one percent of the total wages paid during the quarter, except that the penalty shall not be less than twenty-five nor more than two hundred dollars. For good cause shown, the commissioner may waive the penalty in accordance with rules and regulations adopted and promulgated by the commissioner. The commissioner shall remit any penalty collected to the State Treasurer who shall credit it to the pool account of the Employment Security Special Contingent Fund.

**Source:** Laws 1939, c. 56, § 11, p. 249; C.S.Supp., 1941, § 48-713; R.S. 1943, § 48-656; Laws 1957, c. 208, § 7, p. 735; Laws 1989, LB 414, § 1; Laws 1994, LB 1337, § 14; Laws 2001, LB 192, § 12; Laws 2017, LB172, § 74.

**48-660.01 Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; lien; liability.**

(1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in subdivision (9) of section 48-603.

(2)(a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law shall pay combined tax under sections 48-648 to 48-661 unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the

commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subdivision (b) of this subsection shall continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying combined tax under the Employment Security Law may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Payments in lieu of contributions shall be made in accordance with this subsection as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

(b) Payment of any bill rendered under subdivision (a) of this subsection shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with subdivision (d) of this subsection;

(c) Payments made by any nonprofit organization under this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization;

(d) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization



unless the organization appeals the redetermination, and the appeal shall be in accordance with the Administrative Procedure Act; and

(e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest that, pursuant to section 48-655, applies to past-due contributions, and the commissioner may file a lien against such nonprofit organization in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of payments in lieu of contributions and interest in default and shall be enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(5) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with section 48-652.

**Source:** Laws 1971, LB 651, § 11; Laws 1985, LB 339, § 42; Laws 1988, LB 352, § 89; Laws 1994, LB 1337, § 19; Laws 1999, LB 165, § 2; Laws 2015, LB271, § 9; Laws 2017, LB172, § 75.

**Cross References**

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

**Uniform State Tax Lien Registration and Enforcement Act**, see section 77-3901.

**48-662 State employment service; establishment; functions; funds available; agreements authorized.**

The state employment service is hereby established in the Department of Labor, State of Nebraska. The commissioner of such department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of the Employment Security Law and for the purpose of performing such functions as are within the purview of the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes, approved June 6, 1933, (48 Stat. 113; 29 U.S.C. 49 (c)), as amended, herein referred to as the Wagner-Peyser Act. The provisions of the Act of Congress are hereby accepted by this state and the Department of Labor is hereby designated and constituted the agency of this state for the purposes of such act. All money received by this state under the Act of Congress shall be paid into the Employment Security Administration Fund and shall be expended solely for the maintenance of the state system of public employment offices. There shall also be credited to the Employment Security Administration Fund for the same purpose, any sums appropriated by the Legislature from the General Fund of the state for the purposes of maintaining public employment offices or of matching funds granted under the Wagner-Peyser Act. For the

purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the Railroad Retirement Board, any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of the Employment Security Law, any political subdivision of this state, or any private nonprofit organization and as a part of such agreements may accept money, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All money received for such purposes shall be paid into the Employment Security Administration Fund.

**Source:** Laws 1941, c. 94, § 17, p. 402; C.S.Supp.,1941, § 48-726; R.S. 1943, § 48-662; Laws 1949, c. 163, § 15, p. 430; Laws 1961, c. 239, § 3, p. 713; Laws 1984, LB 747, § 5; Laws 1985, LB 339, § 44; Laws 2017, LB172, § 76.

**48-663 Benefits; prohibited acts by employee; penalty; limitation of time for prosecution.**

Whoever obtains or increases any benefit or other payment under sections 48-623 to 48-629 or under an employment security law of any other state, the federal government, or a foreign government, either for himself or herself or for any other person, (1) by making a false statement or representation knowing it to be false by oral, written, or electronic communication that can be attributed to such person by use of a personal identification number or other identification process or (2) by knowingly failing to disclose a material fact shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Prosecution under this section may be instituted within three years after the time the offense was committed in any county where any part of the crime was committed, including the county in which the person received the benefits.

**Source:** Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-663; Laws 1949, c. 163, § 16(1), p. 432; Laws 1953, c. 167, § 12, p. 538; Laws 1957, c. 208, § 10, p. 737; Laws 1977, LB 40, § 294; Laws 1985, LB 340, § 1; Laws 1986, LB 950, § 7; Laws 2001, LB 192, § 14; Laws 2017, LB172, § 77.

**48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.**

(1)(a) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by an adjudicator, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications.

(b) In addition to any benefits which he or she may be required to repay pursuant to subdivision (1)(a) of this section, if an overpayment is established pursuant to this section, an individual shall be required to pay to the depart-

ment a penalty equal to fifteen percent of the amount of benefits received as a result of such willful failure to disclose or falsification. All amounts collected pursuant to this subdivision shall be remitted for credit to the Unemployment Compensation Fund.

(c) An appeal may be taken from any determination made pursuant to subdivision (1)(a) of this section in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subdivision (1)(a) of this section and pay the penalty required under subdivision (1)(b) of this section fails or refuses to repay such overpayment and pay any penalty assessed within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

**Source:** Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11; Laws 2012, LB1058, § 9; Laws 2015, LB271, § 10; Laws 2017, LB172, § 78.

**48-664 Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.**

Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649 to 48-649.04, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment oc-

curs, in whole or in part, as the result of a violation of this section by an employer, the amount of the overpayment recovered shall not be credited back to such employer's experience account.

**Source:** Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-664; Laws 1953, c. 167, § 13, p. 539; Laws 1977, LB 40, § 295; Laws 1985, LB 339, § 45; Laws 2005, LB 484, § 12; Laws 2007, LB265, § 12; Laws 2017, LB172, § 79.

**48-665 Benefits; erroneous payments; recovery; setoff against federal income tax refund; procedure.**

(1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209, or (d) as provided in subsection (2) of this section.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a liable party's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the liable party's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

**Source:** Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11; Laws 2012, LB1058, § 10; Laws 2017, LB172, § 80.

**48-665.01 Benefits; unlawful payments from foreign state or government; recovery.**

Any person who has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government and who has been found liable to repay benefits received under such law may be required to repay to the commissioner for such state or foreign government the amount found due. Such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent for such agency, (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (3) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209, or (4) as provided in subsection (2) of section 48-665.

**Source:** Laws 1953, c. 167, § 14(2), p. 540; Laws 1986, LB 950, § 9; Laws 1993, LB 46, § 16; Laws 2012, LB1058, § 11.

**48-669 Repealed. Laws 2017, LB172, § 89.**

**48-672 Short-time compensation program created.**

Sections 48-672 to 48-683 create the short-time compensation program.

**Source:** Laws 2014, LB961, § 13.

**48-673 Short-time compensation program; terms, defined.**

For purposes of sections 48-672 to 48-683:

(1) Affected unit means a specified plant, department, shift, or other definable unit which includes three or more employees to which an approved short-time compensation plan applies;

(2) Commissioner means the Commissioner of Labor or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan;

(3) Health and retirement benefits means employer-provided health benefits and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, or contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code, which are incidents of employment in addition to the cash remuneration earned;

(4) Short-time compensation means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the Employment Security Law;

(5) Short-time compensation plan means a plan submitted by an employer, for written approval by the commissioner, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs;

(6) Unemployment compensation means the unemployment benefits payable under the Employment Security Law other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law

providing for compensation, assistance, or allowances with respect to unemployment; and

(7) Usual weekly hours of work means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

**Source:** Laws 2014, LB961, § 14.

**48-674 Short-time compensation program; participation; application; form; contents.**

An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the commissioner for approval. The commissioner shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

(1) The affected unit or units covered by the plan, including the number of full-time or part-time employees in such unit, the percentage of employees in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number, and any other information required by the commissioner to identify plan participants;

(2) A description of how employees in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those employees in a collective-bargaining unit as well as any employees in the affected unit who are not in a collective-bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;

(3) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation plan application may be approved which shall be not less than ten percent and not more than sixty percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application;

(4)(a) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program.

(b) For defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(c) Notwithstanding subdivisions (4)(a) and (b) of this section, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating;

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent layoffs, or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the short-time compensation plan;

(6) Certification by the employer that the short-time compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment;

(7) Agreement by the employer to: Furnish reports to the commissioner relating to the proper conduct of the plan; allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the commissioner deems necessary for the agency to implement the plan and which are consistent with the requirements for short-time compensation plan applications;

(8) Certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;

(9) The effective date and duration of the plan that shall expire not later than the end of the twelfth full calendar month after the effective date;

(10) Certification by the employer that it has obtained the written approval of any applicable collective-bargaining unit representative and has notified all affected employees who are not in a collective-bargaining unit of the proposed short-time compensation plan;

(11) Certification by the employer that it will not hire additional part-time or full-time employees for the affected unit while the short-time compensation plan is in effect; and

(12) Any other provision added to the application by the commissioner that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

**Source:** Laws 2014, LB961, § 15.

**48-675 Short-time compensation program; commissioner; decision; eligibility.**

(1) The commissioner shall approve or disapprove a short-time compensation plan in writing within thirty days after its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-time compensation plan for approval not earlier than forty-five days after the date of the disapproval.

(2)(a) A short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating under section 48-649.03, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security

Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application.

(b) A short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application.

**Source:** Laws 2014, LB961, § 16; Laws 2017, LB172, § 81.

**48-676 Short-time compensation program; plan; effective date; notice of approval; expiration; revocation; termination.**

(1) A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner.

(2) If a short-time compensation plan is revoked by the commissioner under section 48-677, the plan shall terminate on the date specified in the commissioner's written order of revocation.

(3) An employer may terminate a short-time compensation plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date.

(4) An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

**Source:** Laws 2014, LB961, § 17.

**48-677 Short-time compensation program; plan; revocation; procedure; grounds; order.**

(1) The commissioner may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

(2) The commissioner may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

**Source:** Laws 2014, LB961, § 18.

**48-678 Short-time compensation program; plan; modification; request; decision; employer; report.**

(1) An employer may request a modification of an approved plan by filing a written request with the commissioner. The request shall identify the specific



provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The commissioner shall approve or disapprove the proposed modification in writing within thirty days after receipt and promptly communicate the decision to the employer.

(2) The commissioner may approve a request for modification of the plan based on conditions that have changed since the plan was approved if the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the commissioner shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

(3) An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer must report every change to the plan to the commissioner promptly and in writing. The commissioner may terminate an employer's plan if the employer fails to meet this reporting requirement. If the commissioner determines that the reported change is substantial, the commissioner shall require the employer to request a modification to the plan.

**Source:** Laws 2014, LB961, § 19.

**48-679 Short-time compensation program; individual; eligibility.**

An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

(1) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed;

(2) Notwithstanding any other provisions of the Employment Security Law relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the commissioner such as employer-sponsored training or training funded under the federal Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq.; and

(3) Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

**Source:** Laws 2014, LB961, § 20; Laws 2017, LB172, § 82.

**48-680 Short-time compensation program; weekly benefit amount; provisions applicable to individuals.**

(1) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(2) An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than fifty-two weeks under a short-time compensation plan.

(3) The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of unemployment compensation established for that individual's benefit year.

(4) Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(5) The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

(a) If combined hours of work in a week for both employers does not result in a reduction of at least ten percent, or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to short-time compensation;

(b) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, of the usual weekly hours of work for the short-time compensation employer, the short-time compensation payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this subdivision shall be reported as a week of short-time compensation; and

(c) If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his or her usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (1) of this section.

(6) An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of unemployment compensation to which he or she would otherwise be eligible.

(7) An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week

subject to the disqualifying income and other provisions applicable to claims for regular compensation.

**Source:** Laws 2014, LB961, § 21.

**48-681 Short-time compensation; charged to employer's experience account.**

Short-time compensation shall be charged to the employer's experience account in the same manner as unemployment compensation is charged. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

**Source:** Laws 2014, LB961, § 22.

**48-682 Short-time compensation; when considered exhaustee.**

An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits under section 48-628.14 and, if otherwise eligible under such section, shall be eligible to receive extended benefits.

**Source:** Laws 2014, LB961, § 23; Laws 2017, LB172, § 83.

**48-683 Short-time compensation program; department; funding; report.**

(1) The department shall not use General Funds to implement the short-time compensation program. The department shall use any and all available federal funds to implement the short-time compensation program, including, but not limited to, federal funds distributed to the state under sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended.

(2) The department shall submit an annual report to the Governor and electronically to the Legislature on the short-time compensation program trends, including the number of employers filing short-time compensation program plans, the number of layoffs averted through the use of the short-time compensation program, the amount of short-time compensation program benefits paid, and other information pertinent to the short-time compensation program.

**Source:** Laws 2014, LB961, § 24.

**ARTICLE 7**

**BOILER INSPECTION**

Section	
48-719.	Transferred to section 81-5,165.
48-720.	Transferred to section 81-5,166.
48-721.	Transferred to section 81-5,167.
48-722.	Transferred to section 81-5,168.
48-723.	Transferred to section 81-5,169.
48-724.	Transferred to section 81-5,170.
48-725.	Transferred to section 81-5,171.
48-726.	Transferred to section 81-5,172.
48-727.	Transferred to section 81-5,173.
48-728.	Transferred to section 81-5,174.
48-729.	Transferred to section 81-5,175.
48-730.	Transferred to section 81-5,176.
48-731.	Transferred to section 81-5,177.

## Section

48-732.	Transferred to section 81-5,178.
48-733.	Transferred to section 81-5,179.
48-735.01.	Transferred to section 81-5,180.
48-736.	Transferred to section 81-5,181.
48-737.	Transferred to section 81-5,182.
48-738.	Transferred to section 81-5,183.
48-739.	Transferred to section 81-5,184.
48-740.	Transferred to section 81-5,185.
48-741.	Transferred to section 81-5,186.
48-742.	Transferred to section 81-5,187.
48-743.	Transferred to section 81-5,188.

**48-719 Transferred to section 81-5,165.**

**48-720 Transferred to section 81-5,166.**

**48-721 Transferred to section 81-5,167.**

**48-722 Transferred to section 81-5,168.**

**48-723 Transferred to section 81-5,169.**

**48-724 Transferred to section 81-5,170.**

**48-725 Transferred to section 81-5,171.**

**48-726 Transferred to section 81-5,172.**

**48-727 Transferred to section 81-5,173.**

**48-728 Transferred to section 81-5,174.**

**48-729 Transferred to section 81-5,175.**

**48-730 Transferred to section 81-5,176.**

**48-731 Transferred to section 81-5,177.**

**48-732 Transferred to section 81-5,178.**

**48-733 Transferred to section 81-5,179.**

**48-735.01 Transferred to section 81-5,180.**

**48-736 Transferred to section 81-5,181.**

**48-737 Transferred to section 81-5,182.**

**48-738 Transferred to section 81-5,183.**

**48-739 Transferred to section 81-5,184.**

**48-740 Transferred to section 81-5,185.**

**48-741 Transferred to section 81-5,186.**

**48-742 Transferred to section 81-5,187.**

**48-743 Transferred to section 81-5,188.**

## ARTICLE 8

## COMMISSION OF INDUSTRIAL RELATIONS

Section	
48-801.	Terms, defined.
48-801.01.	Act, how cited.
48-802.	Public policy.
48-804.	Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.
48-809.	Commission; powers.
48-811.	Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.
48-811.02.	Repealed. Laws 2011, LB 397, § 35.
48-813.	Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.
48-816.	Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.
48-817.	Commission; findings; decisions; orders.
48-818.	Commission; findings; order; powers; duties; orders authorized; modification.
48-818.01.	School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.
48-818.02.	School district, educational service unit, or community college; total compensation; considerations.
48-818.03.	School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.
48-824.	Labor negotiations; prohibited practices.
48-838.	Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.
48-839.	Changes made by Laws 2011, LB397; applicability.

**48-801 Terms, defined.**

As used in the Industrial Relations Act, unless the context otherwise requires:

- (1) Certificated employee has the same meaning as in section 79-824;
- (2) Commission means the Commission of Industrial Relations;
- (3) Commissioner means a member of the commission;
- (4) Governmental service means all services performed under employment by the State of Nebraska or any political or governmental subdivision thereof, including public corporations, municipalities, and public utilities;
- (5) Industrial dispute includes any controversy between public employers and public employees concerning terms, tenure, or conditions of employment; the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; or refusal to discuss terms or conditions of employment;
- (6) Instructional employee means an employee of a community college who provides direct instruction to students;
- (7) Labor organization means any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with

public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(8) Metropolitan statistical area means a metropolitan statistical area as defined by the United States Office of Management and Budget;

(9) Municipality means any city or village in Nebraska;

(10) Noncertificated and noninstructional school employee means a school district, educational service unit, or community college employee who is not a certificated or instructional employee;

(11) Public employee includes any person employed by a public employer;

(12) Public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia;

(13) Public utility includes any person or governmental entity, including any public corporation, public power district, or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof; and

(14) Supervisor means any public employee having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

**Source:** Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1; Laws 2011, LB397, § 1.

#### **48-801.01 Act, how cited.**

Sections 48-801 to 48-839 shall be known and may be cited as the Industrial Relations Act.

**Source:** Laws 1986, LB 809, § 1; Laws 1995, LB 365, § 1; Laws 1995, LB 382, § 3; Laws 2011, LB397, § 2.

#### **48-802 Public policy.**

To make operative the provisions of section 9, Article XV, of the Constitution of Nebraska, the public policy of the State of Nebraska is hereby declared to be as follows:

(1) The continuous, uninterrupted and proper functioning and operation of the governmental service including governmental service in a proprietary capacity and of public utilities engaged in the business of furnishing transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more of them, to the people of Nebraska are hereby

declared to be essential to their welfare, health, and safety. It is contrary to the public policy of the state to permit any substantial impairment or suspension of the operation of governmental service, including governmental service in a proprietary capacity or any such utility by reason of industrial disputes therein. It is the duty of the State of Nebraska to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities, or catastrophes which would result therefrom. It is therefor further declared that governmental service, including governmental service in a proprietary capacity, and the service of such public utilities are clothed with a vital public interest and to protect the same it is necessary that the relations between the public employers and public employees in such industries be regulated by the State of Nebraska to the extent and in the manner provided in the Industrial Relations Act;

(2) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity of this state, either by strike, lockout, or other means; and

(3) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any public utility service, either by strike, lockout, or other means.

**Source:** Laws 1947, c. 178, § 2, p. 587; Laws 2011, LB397, § 3.

**48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.**

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission. Three commissioners shall preside over and decide all industrial disputes where the matter at issue is the comparability of wages, benefits, and terms and conditions of employment.

(4) The commission shall not be subject to the Administrative Procedure Act.

**Source:** Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2; Laws 2011, LB397, § 4.

**Cross References**

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

**48-809 Commission; powers.**

The commission may adopt all reasonable and proper regulations to govern its proceedings, the filing of pleadings, the issuance and service of process, and the issuance of subpoenas for attendance of witnesses, may administer oaths, and may regulate the mode and manner of all its investigations, inspections, hearings, and trials. Except as otherwise provided in the Industrial Relations Act or the State Employees Collective Bargaining Act, in the taking of evidence, the rules of evidence, prevailing in the trial of civil cases in Nebraska, shall be observed by the commission.

**Source:** Laws 1947, c. 178, § 9, p. 590; Laws 2011, LB397, § 5.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-811 Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.**

(1) Except as provided in the State Employees Collective Bargaining Act, any public employer, public employee, or labor organization, or the Attorney General of Nebraska on his or her own initiative or by order of the Governor, when any industrial dispute exists between parties as set forth in section 48-810, may file a petition with the commission invoking its jurisdiction. No adverse action by threat or harassment shall be taken against any public employee because of any petition filing by such employee, and the employment status of such employee shall not be altered in any way pending disposition of the petition by the commission except as provided in subsection (2) of this section.

(2) If a change in the employment status or in wages or terms and conditions of employment is necessary, a motion by either party or by the parties jointly may be presented to the commission at that time and if the commission finds, based on a showing of evidence at a hearing thereon, that the requested change is both reasonable and necessary to serve an important public interest and that the employer has not considered a change in the employment status, wages, or terms and conditions of employment as a policy alternative on an equal basis with other policy alternatives to achieve budgetary savings, the commission may order that the requested change be allowed pending final resolution of the pending industrial dispute.

(3) Subsection (2) of this section does not apply to public employers subject to the State Employees Collective Bargaining Act.

**Source:** Laws 1947, c. 178, § 11, p. 590; Laws 1969, c. 407, § 4, p. 1408; Laws 1987, LB 661, § 24; Laws 2011, LB397, § 6.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-811.02 Repealed. Laws 2011, LB 397, § 35.****48-813 Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.**

(1) Whenever the jurisdiction of the commission is invoked, notice of the pendency of the proceedings shall be given in such manner as the commission



shall provide for serving a copy of the petition and notice of filing upon the adverse party. A public employer or labor organization may be served by sending a copy of the petition filed to institute the proceedings and a notice of filing, which shall show the filing date, in the manner provided for service of a summons in a civil action. Such employer or labor organization shall have twenty days after receipt of the petition and notice of filing in which to serve and file its response.

(2) The petitioner shall include its final offer, as voted by the petitioner, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its petition. The respondent shall include its final offer, as voted by the respondent, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its answer. Within fourteen days after filing of the answer, the parties shall vote to accept or reject or consider pursuant to a ratification process the other's final offer and file a subsequent pleading indicating the result. The vote concerning the governing body's final offer shall be published on its agenda and held where the public may attend. The commission shall not enter a final order on wages or conditions of employment unless both parties have rejected the others' final offer. This subsection does not apply to public employers subject to the State Employees Collective Bargaining Act.

(3) When a petition is filed to resolve an industrial dispute, a hearing shall mandatorily be held within sixty days from the date of filing thereof. A recommended decision and order in cases arising under section 48-818, an order in cases not arising under section 48-818, and findings if required, shall mandatorily be made and entered thereon within thirty days after such hearing. The time requirements specified in this section may be extended for good cause shown on the record or by agreement of the parties. Failure to meet such mandatory time requirements shall not deprive the commission of jurisdiction. However, if the commission fails to hold a hearing on the industrial dispute within sixty days of filing or has failed to make a recommended decision and order, and findings of fact if required, in cases arising under section 48-818, or an order, and findings of fact if required, in cases not arising under section 48-818, and findings, within thirty days after the hearing and good cause is not shown on the record or the parties to the dispute have not jointly stipulated to the enlargement of the time limit, then either party may file an action for mandamus in the district court for Lancaster County to require the commission to hold the hearing or to render its order and findings if required. For purposes of this section, the hearing on an industrial dispute shall not be deemed completed until the record is prepared and counsel briefs have been submitted, if such are required by the commission.

(4) Any party, including the State of Nebraska or any of its employer-representatives as defined in section 81-1371 or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the commission. The giving of such notice in such manner shall subject the public employers, the labor organizations, and the persons therein to the jurisdiction of the commission.

**Source:** Laws 1947, c. 178, § 13, p. 590; Laws 1972, LB 1228, § 2; Laws 1974, LB 819, § 7; Laws 1983, LB 447, § 72; Laws 1984, LB 832, § 1; Laws 1987, LB 661, § 25; Laws 2011, LB397, § 7.

## Cross References

State Employees Collective Bargaining Act, see section 81-1369.

**48-816 Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.**

(1)(a) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the event of an industrial dispute between a public employer and a public employee or a labor organization when such public employer and public employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any public employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Before July 1, 2012, upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. On and after July 1, 2012, upon the request of either party, a resolution officer may be appointed if the parties are within the provisions of section 48-818.01. The commission shall appoint mediators, factfinders, or before July 1, 2012, special masters and on and after such date resolution officers for such purpose. Such orders for bargaining, mediation, factfinding, or before July 1, 2012, a special master proceeding and on and after such date a resolution officer proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith means the performance of the mutual obligation of the public employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) In negotiations between a municipality, municipally owned utility, or county and a labor organization, staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining.

(2) Except as provided in the State Employees Collective Bargaining Act, public employers may recognize employee organizations for the purpose of negotiating collectively in the determination of and administration of grievances arising under the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and may negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3)(a) Except as provided in subdivisions (b) and (c) of this subsection, a supervisor shall not be included in a single bargaining unit with any other public employee who is not a supervisor.

(b) All firefighters and police officers employed in the fire department or police department of any municipality in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit represented by a public employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize a public employees bargaining unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such bargaining unit is designated or elected by public employees in the unit.

(c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize a public employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the public employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

(4) When a public employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such public employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in such act and to negotiate and enter into written agreements with such public employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by a public employer of a request from a labor organization to bargain on behalf of public employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the public employer as the exclusive bargaining representative for the public employees in that bargaining unit.

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission may (a) make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) make available to public employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and public employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, before July 1, 2012, special masters and on and after such date resolution officers, or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request shall be specific as to the issues on which the party wishes the commission to make findings of fact.

(b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.

(c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within twenty-five days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding such posttrial conference, which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

**Source:** Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws

1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2; Laws 2011, LB397, § 8.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-817 Commission; findings; decisions; orders.**

After the hearing and any investigation, the commission shall make all findings, findings of fact, recommended decisions and orders, and decisions and orders in writing, which findings, findings of fact, recommended decisions and orders, and decisions and orders shall be entered of record. Except as provided in the State Employees Collective Bargaining Act, the final decision and order or orders shall be in effect from and after the date therein fixed by the commission, but no such order or orders shall be retroactive except as provided otherwise in the Industrial Relations Act. Except as provided otherwise in the Industrial Relations Act, in the making of any findings or orders in connection with any such industrial dispute, the commission shall give no consideration to any evidence or information which it may obtain through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

**Source:** Laws 1947, c. 178, § 17, p. 592; Laws 1979, LB 444, § 7; Laws 1984, LB 832, § 3; Laws 1987, LB 661, § 27; Laws 2011, LB397, § 9.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-818 Commission; findings; order; powers; duties; orders authorized; modification.**

(1) Except as provided in the State Employees Collective Bargaining Act, the findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the commission shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the commission shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the commission's own motion or on application by any of

the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

(2) For purposes of industrial disputes involving public employers other than school districts, educational service units, and community colleges with their certificated and instructional employees and public employers subject to the State Employees Collective Bargaining Act:

(a) Job matches shall be sufficient for comparison if (i) evidence supports at least a seventy percent match based on a composite of the duties and time spent performing those duties and (ii) at least three job matches per classification are available for comparison. If three job matches are not available, the commission shall base its order on the historic relationship of wages paid to such position over the last three fiscal years, for which data is available, as compared to wages paid to a position for which a minimum of three job matches are available;

(b) The commission shall adhere to the following criteria when establishing an array:

(i) Geographically proximate public employers and Nebraska public employers are preferable for comparison;

(ii) The preferred size of an array is seven to nine members. As few as five members may be chosen if all array members are Nebraska employers. The commission shall include members mutually agreed to by the parties in the array;

(iii) If more than nine employers with job matches are available, the commission shall limit the array to nine members, based upon selecting array members with the highest number of job matches at the highest job match percentage;

(iv) Nothing in this subdivision (2)(b) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members;

(v) The commission shall not require a balanced number of larger or smaller employers or a balanced number of Nebraska or out-of-state employers;

(vi) If the array includes a public employer in a metropolitan statistical area other than the metropolitan statistical area in which the employer before the commission is located, only one public employer from such metropolitan statistical area may be included in the array;

(vii) Arrays for public utilities with annual revenue of five hundred million dollars or more shall include both comparable public and privately owned utilities. Arrays for public utilities with annual revenue of less than five hundred million dollars may include both comparable public and privately owned utilities. Public utilities that produce radioactive material and energy pursuant to section 70-627.02 shall have at least four members in its array that produce radioactive material and energy when employees directly involved in this production are included in the bargaining unit. For public utilities that generate, transmit, and distribute power, the array shall include members that also perform these functions. For a public utility serving a city of the primary class, the array shall only include public power districts in Nebraska that generate, transmit, and distribute power and any out-of-state utilities whose number of meters served is not more than double or less than one-half of the number of meters served by the public utility serving a city of the primary class unless

evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(viii) In constructing an array for a public utility, the commission shall use fifty-mile concentric circles until it reaches the optimum array pursuant to subdivision (2)(b)(ii) of this section; and

(ix) For a statewide public utility that provides service to a majority of the counties in Nebraska, any Nebraska public or private job match may be used without regard to the population or full-time equivalent employment requirements of this section, and any out-of-state job match may be used if the full-time equivalent employment of the out-of-state employer is no more than double and no less than one-half of the full-time equivalent employment of the bargaining unit of the statewide public utility in question;

(c) In determining same or similar working conditions, the commission shall adhere to the following:

(i) Public employers in Nebraska shall be presumed to provide same or similar working conditions unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(ii) Public employers shall be presumed to provide the same or similar working conditions if (A) for public employers that are counties or municipalities, the population of such public employer is not more than double or less than one-half of the population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, (B) for public employers that are public utilities, the number of such public employer's employees is not more than double or less than one-half of the number of employees of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, or (C) for public employers that are school districts, educational service units, or community colleges with noncertificated and noninstructional school employees, the student enrollment of such public employer is not more than double or less than one-half of the student enrollment of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii)(A) Public employers located within a metropolitan statistical area who meet the population requirements of subdivision (2)(c)(ii)(A) of this section, if the public employer is a county or municipality, or the student enrollment requirements of subdivision (2)(c)(ii)(C) of this section, if the public employer is a school district or an educational service unit, shall be presumed to provide the same or similar working conditions if the metropolitan statistical area population in which they are located is not more than double or less than one-half the metropolitan statistical area population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar.

(B) The presumption created by subdivision (2)(c)(iii)(A) of this section may be overcome in situations where evidence establishes that there are substantial similarities which cause the work or conditions of employment to be similar, allowing the commission to consider public employers located within a metropolitan statistical area even if the metropolitan statistical area population in

which that employer or employers are located is more than double or less than one-half the metropolitan statistical area population of the public employer before the commission. The burden of establishing sufficient similarity is on the party seeking to include a public employer pursuant to this subdivision (2)(c)(iii)(B) of this section; and

(iv) Public employers other than public utilities which are not located within a metropolitan statistical area shall not be compared to public employers located in a metropolitan statistical area. For purposes of this subdivision, metropolitan statistical area includes municipalities with populations of fifty thousand inhabitants or more;

(d) Prevalent shall be determined as follows: (i) For numeric values, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median. For fringe benefits, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median as long as a majority of the array members provide the benefit; and (ii) for nonnumeric comparisons, prevalent shall be the mode that the majority of the array members provide if the compared-to benefit is similar in nature. If there is no clear mode, the benefit or working condition shall remain unaltered by the commission;

(e) For any out-of-state employer, the parties may present economic variable evidence and the commission shall determine what, if any, adjustment is to be made if such evidence is presented. The commission shall not require that any such economic variable evidence be shown to directly impact the wages or benefits paid to employees by such out-of-state employer;

(f) In determining total or overall compensation, the commission shall value every economic item even if the year in question has expired. The commission shall require that all wage and benefit levels be leveled over the twelve-month period in dispute to account for increases or decreases which occur in the wage or benefit levels provided by any array member during such twelve-month period;

(g) In cases filed pursuant to this subsection (2) of this section, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted by rule pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery, and any such evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters thereon. The commission, with the consent of the parties to the dispute, and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be received by the commission based upon evidence provided in accordance with this subdivision. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis;



(h) In determining the value of defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall use an hourly rate value calculation as follows:

(i) Once the array has been chosen, each array member and the public employer of the subject bargaining unit shall provide a copy of its most recent defined benefit pension actuarial valuation report. Each array member and the public employer of the subject bargaining unit shall provide the most recent copy of its health insurance plans or health benefit plans, covering the preceding twelve-month period, with associated employer and employee costs, to the parties and the commission. Each array member shall also provide information concerning premium equivalent payments and contributions for health savings accounts. Each array member and the public employer of the subject bargaining unit shall indicate which plans are most used. The plans that are most used shall be used for comparison;

(ii) Once the actuarial valuation reports are received, the parties shall have thirty calendar days to determine whether to have the pensions actuarially valued at an hourly rate value other than equal. The hourly rate value for defined benefit plans shall be presumed to be equal to that of the array selected unless one or both of the parties presents evidence establishing that the actuarially derived annual normal cost of the pension benefit for each job classification in the subject bargaining unit is above or below the midpoint of the average normal cost. Consistent methods and assumptions are to be applied to determine the annual normal cost of any defined benefit pension plan of the subject bargaining unit and each array member. For this purpose, the entry age normal actuarial cost method is recommended. The actuarial assumptions that are selected for this purpose should reflect expectations for a defined benefit pension plan maintained for the employees of the subject bargaining unit and acknowledge the eligibility and benefit provisions for each respective defined benefit pension plan. In this regard, different eligibility and benefit provisions may suggest different retirement or termination of employment assumptions. The methods and assumptions shall be attested to by an actuary holding a current membership with the American Academy of Actuaries. Any party who requests or presents evidence regarding actuarial valuation of a defined benefit plan shall be responsible for costs associated with such valuation and testimony. The actuarial valuation is presumed valid, unless a party presents competent actuarial evidence that the valuation is invalid;

(iii) The hourly rate value for defined contribution plans shall be established upon comparison of employer contributions;

(iv) The hourly rate value for health insurance plans or health benefit plans shall be established based upon the public employer's premium payments, premium equivalent payments, and public employer and public employee contributions to health savings accounts;

(v) The commission shall not compare defined benefit plans to defined contribution plans or defined contribution plans to defined benefit plans; and

(vi) The commission shall order increases or decreases in wage rates by job classification based upon the hourly rate value for health-related benefits, benefits provided for retirement plans, and wages;

(i) For benefits other than defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall

issue an order based upon a determination of prevalency as determined under subdivision (2)(d) of this section; and

(j) The commission shall issue an order regarding increases or decreases in base wage rates or benefits as follows:

(i) The order shall be retroactive with respect to increases and decreases to the beginning of the bargaining year in dispute;

(ii) The commission shall determine whether the hourly rate value of the bargaining unit's members or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the hourly rate value falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the hourly rate value is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the hourly rate value is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the hourly rate value is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the hourly rate value is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this subdivision (2)(j) of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis;

(iii) The parties shall have twenty-five calendar days to negotiate modifications to wages and benefits. If no agreement is reached, the commission's order shall be followed as issued; and

(iv) The commission shall provide an offset to the public employer when a lump-sum payment is due because benefits were paid in excess of the prevalent as determined under subdivision (2)(d) of this section or when benefits were paid below the prevalent as so determined but wages were above prevalent.

**Source:** Laws 1947, c. 178, § 18, p. 592; Laws 1969, c. 407, § 6, p. 1410; Laws 1987, LB 661, § 28; Laws 2011, LB397, § 10.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-818.01 School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.**

(1) The Legislature finds that it is in the public's interest that collective bargaining involving school districts, educational service units, and community colleges and their certificated and instructional employees commence and

conclude in a timely fashion consistent with school district budgeting and financing requirements. To that end, the timelines in this section shall apply when the public employer is a school district, educational service unit, or community college.

(2) On or before September 1 of the year preceding the contract year in question, the certificated and instructional employees' collective-bargaining agent shall request recognition as bargaining agent. The governing board shall respond to such request not later than the following October 1. A request for recognition need not be filed if the certificated and instructional employees' bargaining agent has been certified by the commission as the exclusive collective-bargaining agent. On or before November 1 of the year preceding the contract year in question, negotiations shall begin. There shall be no fewer than four negotiations meetings between the certificated and instructional employees' collective-bargaining agent and the governing board's bargaining agent. Either party may seek a bargaining order pursuant to subsection (1) of section 48-816 at any stage in the negotiations. If an agreement is not reached on or before the following February 8, the parties shall submit to mandatory mediation or factfinding as ordered by the commission pursuant to sections 48-811 and 48-816 unless the parties mutually agree in writing to forgo mandatory mediation or factfinding.

(3)(a) The mediator or factfinder as ordered by the commission under subsection (2) of this section shall be a resolution officer. The commission shall provide the parties with the names of five individuals qualified to serve as the resolution officer. If the parties cannot agree on an individual, each party shall alternately strike names. The remaining individual shall serve as the resolution officer.

(b) The resolution officer may:

- (i) Determine whether the issues are ready for adjudication;
- (ii) Identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached;
- (iii) Accept stipulations;
- (iv) Schedule hearings;
- (v) Prescribe rules of conduct for conferences;
- (vi) Order additional mediation if necessary;
- (vii) Take any other action which may aid in resolution of the industrial dispute; and
- (viii) Consult with a party ex parte only with the concurrence of all parties.

(c) The resolution officer shall choose the most reasonable final offer on each issue in dispute. In making such choice, he or she shall consider factors relevant to collective bargaining between public employers and public employees, including comparable rates of pay and conditions of employment as described in subsection (1) of section 48-818. The resolution officer shall not apply strict rules of evidence. Persons who are not attorneys may present cases to the resolution officer.

(d) If either party to a resolution officer proceeding is dissatisfied with the resolution officer's decision, such party shall have the right to file an action with the commission seeking a determination of terms and conditions of

employment pursuant to subsection (1) of section 48-818. Such action shall not constitute an appeal of the resolution officer's decision, but rather shall be heard by the commission as an action brought pursuant to subsection (1) of section 48-818. The commission shall resolve, pursuant to the mandates of such section, all of the issues identified by either party and which were recognized by the resolution officer as an industrial dispute. If parties have not filed with the commission pursuant to subsection (6) of this section, the decision of the resolution officer shall be deemed final and binding.

(4) For purposes of this section, issue means broad subjects of negotiation which are presented to the resolution officer pursuant to this section. All aspects of wages are a single issue, all aspects of insurance are a single issue, and all other subjects of negotiations classified in broad categories are single issues.

(5) On or before March 25 of the year preceding the contract year in question or within twenty-five days after the certification of the amounts to be distributed to each local system and each school district pursuant to the Tax Equity and Educational Opportunities Support Act as provided in section 79-1022 for the contract year in question, whichever occurs last in time, negotiations, mediation, and factfinding shall end.

(6) If an agreement for the contract year in question has not been achieved on or before the date for negotiation, mediation, or factfinding to end in subsection (5) of this section, either party may, within fourteen days after such date, file a petition with the commission pursuant to section 48-811 and subsection (1) of section 48-818 to resolve the industrial dispute for the contract year in question. The commission shall render a decision on such industrial dispute on or before September 15 of the contract year in question.

(7) Any existing collective-bargaining agreement will continue in full force and effect until superseded by further agreement of the parties or by an order of the commission. The parties may continue to negotiate unresolved issues by mutual agreement while the matter is pending with the commission.

(8) All collective-bargaining agreements shall be written and executed by representatives of the governing board and representatives of the certificated and instructional employees' bargaining unit. The agreement shall contain at a minimum the following:

- (a) A salary schedule or objective method of determining salaries;
- (b) A description of benefits being provided or agreed upon including a specific level of coverage provided in any group insurance plan, a dollar amount, or percentage of premiums to be paid, and by whom; and
- (c) A provision that the existing agreement will continue until replaced by a successor agreement or as amended by a final order of the commission.

**Source:** Laws 2011, LB397, § 11.

**Cross References**

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

**48-818.02 School district, educational service unit, or community college; total compensation; considerations.**

When determining total compensation pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall consider

the employer's contribution to retirement plans and health insurance premiums, premium equivalent payments, or cash equivalent payments and any other costs, including Federal Insurance Contributions Act contributions, associated with providing such benefits.

**Source:** Laws 2011, LB397, § 12.

**48-818.03 School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.**

When establishing wage rates pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

**Source:** Laws 2011, LB397, § 13.

**48-824 Labor negotiations; prohibited practices.**

(1) It is a prohibited practice for any public employer, public employee, public employee organization, or collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

(2) It is a prohibited practice for any public employer or the public employer's negotiator to:

(a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act;

(b) Dominate or interfere in the administration of any public employee organization;

(c) Encourage or discourage membership in any public employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the public employee has formed, joined, or chosen to be represented by any public employee organization;

(e) Refuse to negotiate collectively with representatives of collective-bargaining agents as required by the Industrial Relations Act;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act; and

(g) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(3) It is a prohibited practice for any public employee, public employee organization, or bargaining unit or for any representative or collective-bargaining agent to:

(a) Interfere with, restrain, coerce, or harass any public employee with respect to any of the public employee's rights granted by the Industrial Relations Act;

(b) Interfere with, restrain, or coerce a public employer with respect to rights granted by the Industrial Relations Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with a public employer as required by the Industrial Relations Act; and

(d) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(4) The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act if such expression contains no threat of reprisal or force or promise of benefit.

**Source:** Laws 1995, LB 382, § 1; Laws 2011, LB397, § 14.

**48-838 Collective bargaining; questions of representation; elections; non-member employee duty to reimburse; when.**

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of public employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for public employees, except that in no event shall a contract between a public employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent public employees, nor shall any contract bar for more than three years a petition by public employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the public employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the public employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of public employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any public employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting public employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

**Source:** Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7; Laws 2011, LB397, § 15.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-839 Changes made by Laws 2011, LB397; applicability.**

Changes made to the Industrial Relations Act by Laws 2011, LB397, shall apply to petitions filed with the commission on or after October 1, 2011, except for petitions filed involving school districts, educational service units, and community colleges with their certificated and instructional employees for which such changes shall apply on or after July 1, 2012.

**Source:** Laws 2011, LB397, § 16.

**ARTICLE 11****NEBRASKA FAIR EMPLOYMENT PRACTICE ACT**

## Section

- 48-1102. Terms, defined.  
 48-1107.01. Unlawful employment practice for covered entity.  
 48-1107.02. Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined.  
 48-1109. Repealed. Laws 2015, LB 627, § 7.  
 48-1111. Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.  
 48-1114. Opposition to unlawful practice; participation in investigation; communication regarding employee wages, benefits, or other compensation; discrimination prohibited.  
 48-1116. Equal Opportunity Commission; members; appointment; term; quorum; compensation; executive director; representation.  
 48-1117. Commission; powers; duties; enumerated.  
 48-1119. Unlawful practice; complaint; notice; hearing; witnesses; evidence; findings; civil action authorized; order.

**48-1102 Terms, defined.**

For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;



(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) Nothing in this subdivision shall be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation, with respect to disability, shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation, with respect to pregnancy, childbirth, or related medical conditions, shall include acquisition of equipment for sitting, more frequent or

longer breaks, periodic rest, assistance with manual labor, job restructuring, light-duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for breast-feeding or expressing breast milk. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section 28-401;

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law; and

(18) Individual who is pregnant, who has given birth, or who has a related medical condition shall mean an individual with a known limitation who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds, desires, or may be temporarily assigned to. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a

written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

**Source:** Laws 1965, c. 276, § 2, p. 783; Laws 1967, c. 306, § 1, p. 829; Laws 1969, c. 120, § 21, p. 551; Laws 1973, LB 265, § 2; Laws 1973, LB 266, § 2; Laws 1977, LB 161, § 1; Laws 1979, LB 67, § 1; Laws 1983, LB 626, § 74; Laws 1984, LB 14A, § 1; Laws 1985, LB 324, § 1; Laws 1986, LB 1108, § 1; Laws 1989, LB 176, § 1; Laws 1993, LB 121, § 297; Laws 1993, LB 124, § 1; Laws 1993, LB 360, § 3; Laws 2004, LB 1083, § 98; Laws 2015, LB627, § 1.

#### Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

Uniform Controlled Substances Act, see section 28-401.01.

#### **48-1107.01 Unlawful employment practice for covered entity.**

It shall be an unlawful employment practice for a covered entity to:

(1) Discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment; or

(2) Discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

**Source:** Laws 1993, LB 360, § 5; Laws 2015, LB627, § 2.

#### **48-1107.02 Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined.**

(1) When referring to a qualified individual with a disability, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of disability or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(f) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant except when such skills are the factors that the test purports to measure;

(i) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination regardless of disability;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act; and

(j) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or

severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (1)(i)(iii)(B) and (C) of this section.

(2) When referring to an individual who is pregnant, who has given birth, or who has a related medical condition, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the pregnancy, childbirth, or related medical conditions of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting an individual who is pregnant, who has given birth, or who has a related medical condition to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of pregnancy, childbirth, or related medical conditions or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Not making reasonable accommodations to the known physical limitations of an individual who is pregnant, who has given birth, or who has a related medical condition and who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(e) Denying employment opportunities to a job applicant or employee who is pregnant, who has given birth, or who has a related medical condition if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical limitations due to the pregnancy, childbirth, or related medical conditions of the employee or applicant;

(f) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual or a class of individuals who are pregnant, who have given birth, or who have a related medical condition unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(g) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is pregnant, has given birth, or has a related medical condition, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the pregnancy, childbirth, or related medical conditions might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act;

(h) Requiring a medical examination or making inquiries of an employee as to whether the employee is pregnant, has given birth, or has a related medical condition unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (2)(g)(iii)(B) and (C) of this section;

(i) Requiring an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee; and

(j) Taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

**Source:** Laws 1993, LB 360, § 6; Laws 2015, LB627, § 3.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-1109 Repealed. Laws 2015, LB 627, § 7.**

**48-1111 Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.**

(1) Except as otherwise provided in the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a

system which measures earnings by quantity or quality of production or to employees who work in different locations, if such differences are not the result of an intention to discriminate because of race, color, religion, sex, disability, marital status, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test if such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, disability, marital status, or national origin.

It shall not be an unlawful employment practice for a covered entity to deny privileges of employment to an individual with a disability when the qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability:

(a) Have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, as required by the Nebraska Fair Employment Practice Act and the federal Americans with Disabilities Act of 1990; or

(b) Include a requirement that an individual shall not pose a direct threat, involving a significant risk to the health or safety of other individuals in the workplace, that cannot be eliminated by reasonable accommodation.

It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

(2) Except as otherwise provided in the Nebraska Fair Employment Practice Act, women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to provide otherwise.

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion.

Nothing in this section shall preclude an employer from providing employee benefits for abortion under fringe benefit programs or otherwise affect bargaining agreements in regard to abortion.

**Source:** Laws 1965, c. 276, § 11, p. 787; Laws 1973, LB 266, § 8; Laws 1977, LB 161, § 7; Laws 1984, LB 14A, § 2; Laws 1993, LB 360, § 11; Laws 2015, LB627, § 4.

**48-1114 Opposition to unlawful practice; participation in investigation; communication regarding employee wages, benefits, or other compensation; discrimination prohibited.**

(1) It shall be an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he or she (a) has opposed any practice made an unlawful employment practice by the Nebraska Fair Employment Practice Act, (b) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act, (c) has opposed any practice or refused to carry out any action unlawful under federal law or the laws of this

state, or (d) has inquired about, discussed, or disclosed information regarding employee wages, benefits, or other compensation. This subdivision (d) shall not apply to instances in which an employee who has authorized access to the information regarding wages, benefits, or other compensation of other employees as a part of such employee's job functions discloses such information to a person who does not otherwise have authorized access to such information, unless such disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer.

(2) Nothing in this subsection or subdivision (1)(d) of this section shall be contrary to applicable state or federal law or:

(a) Create an obligation for any employer or employee to disclose information regarding employee wages, benefits, or other compensation;

(b) Permit an employee, without the written consent of the employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law. For purposes of this subdivision, proprietary information does not include information regarding employee wages, benefits, or other compensation;

(c) Permit an employee to disclose information regarding wages, benefits, or other compensation of other employees to a competitor of the employer;

(d) Apply to employers which are exempt from the Nebraska Fair Employment Practice Act under section 48-1102;

(e) Permit an employee to discuss information regarding employee wages, benefits, or other compensation during working hours, as defined in existing workplace policies, or in violation of specific contractual obligations; or

(f) Permit an employee to disseminate information regarding employee wages, benefits, or other compensation to the general public. For purposes of this subdivision, general public does not include public officials, judicial officers, legislators, trade associations, or other reasonable third parties for the employee's mutual aid or protection.

(3) The changes made to this section by Laws 2019, LB217, shall not be construed so as to impair or affect the obligation of any lawful contract in existence prior to September 1, 2019.

**Source:** Laws 1965, c. 276, § 14, p. 788; Laws 1985, LB 324, § 2; Laws 1986, LB 1108, § 2; Laws 1993, LB 360, § 14; Laws 2019, LB217, § 1.

**48-1116 Equal Opportunity Commission; members; appointment; term; quorum; compensation; executive director; representation.**

There is hereby established an Equal Opportunity Commission to consist of seven members to be appointed by the Governor. Terms of members shall be three years. As the terms of the members expire, the Governor shall appoint or reappoint the members of the commission for terms of three years to succeed the members whose terms expire. The commission shall elect one member to serve as chairperson of the commission.

Four members of the commission shall constitute a quorum for the purpose of conducting the business thereof. Any action of the commission shall require at least four votes. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.



Members of the commission shall receive fifty dollars per day for their services and shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. Reimbursement shall be for not more than two regular meetings per month and not more than three training sessions for any one fiscal year. Any member of the commission may be removed by the Governor for inefficiency, neglect of duty, misconduct, or malfeasance in office after being given a written statement of the charges and an opportunity to be heard thereon.

The commission shall establish and maintain its principal office in the city of Lincoln and such other offices within the state as it may deem necessary. The commission may meet and function at any place within the state. The commission shall appoint an executive director who shall be directly responsible to the commission. The executive director may appoint such assistants, clerks, agents, and other employees as such executive director may deem necessary, fix their compensation within the limitations provided by law, and prescribe duties of such employees. The executive director may appoint additional staff as the commission deems necessary.

The Attorney General shall represent and appear for the commission in all actions and proceedings involving any question under the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, or section 20-123, 20-124, or 20-132 and shall aid in any investigation or hearing had under either act or any of such sections. The commission shall have an official seal which shall be judicially noticed.

**Source:** Laws 1965, c. 276, § 16, p. 789; Laws 1969, c. 120, § 22, p. 552; Laws 1977, LB 161, § 10; Laws 1981, LB 204, § 84; Laws 1989, LB 175, § 1; Laws 1991, LB 825, § 49; Laws 2020, LB381, § 39.  
Operative date January 1, 2021.

**Cross References**

Nebraska Fair Housing Act, see section 20-301.

**48-1117 Commission; powers; duties; enumerated.**

The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(2) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local agencies if both the employer and complainant have been notified of the filing;

(4) To attempt to eliminate unfair employment practices by means of conference, mediation, conciliation, arbitration, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the application of such regulation or order or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief;

(6) To report, not less than once every two years, to the Clerk of the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, or national origin, as may be desirable. The report shall also include the number of complaints filed under the act alleging a violation of subdivision (2) of section 48-1107.01 and the resolution of such complaints. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the report required by this subdivision by making a request for it to the chairperson of the commission; and

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in the act.

**Source:** Laws 1965, c. 276, § 17, p. 790; Laws 1973, LB 266, § 11; Laws 1977, LB 161, § 11; Laws 1979, LB 322, § 18; Laws 1981, LB 545, § 11; Laws 1984, LB 14A, § 3; Laws 1993, LB 124, § 3; Laws 1993, LB 360, § 15; Laws 2012, LB782, § 63; Laws 2015, LB627, § 5.

**48-1119 Unlawful practice; complaint; notice; hearing; witnesses; evidence; findings; civil action authorized; order.**

(1) In case of failure to eliminate any unlawful employment practice by informal methods of conference, conciliation, persuasion, mediation, or arbitration, the commission may order a public hearing. If such hearing is ordered,

the commission shall cause to be issued and served a written notice, together with a copy of the complaint, requiring the person, employer, labor organization, or employment agency named in the complaint, hereinafter referred to as respondent, to answer such charges at a hearing before the commission at a time and place which shall be specified in such notice. Such hearing shall be within the county where the alleged unlawful employment practice occurred. The complainant shall be a party to the proceeding, and in the discretion of the commission any other person whose testimony has a bearing on the matter may be allowed to intervene therein. Both the complainant and the respondent, in addition to the commission, may introduce witnesses at the hearing. The respondent may file a verified answer to the allegations of the complaint and may appear at such hearing in person and with or without counsel. Testimony or other evidence may be introduced by either party. All evidence shall be under oath and a record thereof shall be made and preserved. Such proceedings shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the State of Nebraska, and shall be of public record.

(2) No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation, or inquiry by, or hearing before the commission when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of such person may tend to incriminate such person in or subject such person to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which such person shall have been compelled under oath to testify or produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by such person in his or her testimony. Such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. Nothing in this subsection shall be construed as precluding any person from claiming any right or privilege available to such person under the fifth amendment to the Constitution of the United States.

(3) After the conclusion of the hearing, the commission shall, within ten days of the receipt of the transcript or the receipt of the recommendations from the hearing officer, make and file its findings of fact and conclusions of law and make and enter an appropriate order. The hearing officer need not refer to the page and line numbers of the transcript when making his or her recommendation to the commission. Such findings of fact and conclusions of law shall be in sufficient detail to enable a court on appeal to determine the controverted questions presented by the proceedings and whether proper weight was given to the evidence. If the commission determines that the respondent has intentionally engaged in or is intentionally engaging in any unlawful employment practice, it shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and order such other affirmative action as may be appropriate which may include, but shall not be limited to, reinstatement or hiring of employees, with or without backpay. Backpay liability shall not accrue from a date more than two years prior to the filing of the charge with the commission. Interim earnings or amounts earnable with reasonable diligence by the person or

persons discriminated against shall operate to reduce the backpay otherwise allowable.

(4) A complainant who has suffered physical, emotional, or financial harm as a result of a violation of section 48-1104 or 48-1114 may, at any stage of the proceedings prior to dismissal, file an action directly in the district court of the county where such alleged violation occurred. If the complainant files a district court action on the charge, the complainant shall provide written notice of such filing to the commission, and such notification shall immediately terminate all proceedings before the commission. The district court shall file and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney’s fees, and costs.

(5) No order of the commission shall require the admission or reinstatement of an individual as a member of a labor organization or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him or her of any backpay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, disability, marital status, or national origin or in violation of section 48-1114. If the commission finds that a respondent has not engaged in any unfair employment practice, it shall within thirty days state its findings of fact and conclusions of law. A copy of any order shall be served upon the person against whom it runs or his or her attorney and notice thereof shall be given to the other parties to the proceedings or their attorneys. Such order shall take effect twenty days after service thereof unless otherwise provided and shall continue in force either for a period which may be designated therein or until changed or revoked by the commission.

(6) Except as provided in subsection (4) of this section, until a transcript of the record of the proceedings is filed in the district court as provided in section 48-1120, the commission may, at any time upon reasonable notice and in such a manner it shall deem proper, modify or set aside, in whole or in part, any finding or order made by it.

**Source:** Laws 1965, c. 276, § 19, p. 793; Laws 1973, LB 266, § 12; Laws 1977, LB 161, § 13; Laws 1993, LB 124, § 5; Laws 2003, LB 701, § 2; Laws 2018, LB193, § 84.

**ARTICLE 12**

**WAGES**

(a) MINIMUM WAGES

Section  
 48-1203. Wages; minimum rate.  
 48-1209.01. Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.

(b) SEX DISCRIMINATION

48-1220. Terms, defined.

(c) WAGE PAYMENT AND COLLECTION

48-1228. Act, how cited.  
 48-1229. Terms, defined.  
 48-1230. Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.

Section	
48-1231.	Employee; claim for wages or unlawful retaliation or discrimination; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.
48-1233.	Commissioner of Labor; enforcement powers.
48-1234.	Commissioner of Labor; citation; notice of penalty; employer contest; hearing; unpaid citation, effect on government contracts.
48-1235.	Employer; retaliation or discrimination prohibited.
48-1236.	Department of Labor; post compliance and enforcement information.

## (a) MINIMUM WAGES

**48-1203 Wages; minimum rate.**

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

- (a) Seven dollars and twenty-five cents per hour through December 31, 2014;
- (b) Eight dollars per hour on and after January 1, 2015, through December 31, 2015; and
- (c) Nine dollars per hour on and after January 1, 2016.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

**Source:** Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22; Initiative Law 2014, No. 425, § 1.

**48-1209.01 Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.**

The officers and members of the police and paid fire departments of cities of the metropolitan and primary classes and of cities of the first class having a population of more than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall each receive a salary of not less than three hundred fifty dollars per month. The city council may, by ordinance, at any time, change, fix or revise the salaries of the officers or members of the police and fire departments of such cities, but in no instance shall the minimum salary of any officer or member be less than three hundred fifty dollars per month.

**Source:** Laws 1965, c. 78, § 1, p. 313; Laws 1979, LB 80, § 63; R.S.1943, (1983), § 19-1824; Laws 2017, LB113, § 46.

## (b) SEX DISCRIMINATION

**48-1220 Terms, defined.**

As used in sections 48-1219 to 48-1227.01, unless the context otherwise requires:

(1) Employee shall mean any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies;

(2) Employer shall mean any person engaged in an industry who has two or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the State of Nebraska, its governmental agencies, and political subdivisions, regardless of the number of employees, but such term shall not include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

(3) Wage rate shall mean all compensation for employment including payment in kind and amounts paid by employers for employee benefits as defined by the commission in regulations issued under sections 48-1219 to 48-1227;

(4) Employ shall include to suffer or permit to work;

(5) Commission shall mean the Equal Opportunity Commission; and

(6) Person shall include one or more individuals, partnerships, limited liability companies, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

**Source:** Laws 1969, c. 389, § 2, p. 1366; Laws 1983, LB 424, § 5; Laws 1983, LB 626, § 75; Laws 1993, LB 121, § 299; Laws 2005, LB 10, § 1; Laws 2016, LB83, § 1.

## Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

## (c) WAGE PAYMENT AND COLLECTION

**48-1228 Act, how cited.**

Sections 48-1228 to 48-1236 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

**Source:** Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1; Laws 2014, LB560, § 1; Laws 2020, LB1016, § 2.  
Operative date October 1, 2020.

**48-1229 Terms, defined.**

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his

or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

(4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs;

(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and paycards; and

(6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

**Source:** Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2; Laws 2014, LB765, § 1.

**48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.**

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer

may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has a written agreement with the employee to deduct, withhold, or divert.

(2) On each regular payday, the employer shall deliver or make available to each employee, by mail or electronically, or shall provide at the employee's normal place of employment during employment hours for all shifts a wage statement showing, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. However, the employer need not provide information on hours worked for employees who are exempt from overtime under the federal Fair Labor Standards Act of 1938, under 29 C.F.R. part 541, unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, whereupon the employer shall send or otherwise provide a statement to the exempt employees showing the hours the employee worked or the payments made to the employee by the employer, as applicable.

(3) When an employer elects to pay wages with a payroll debit card, the employer shall comply with the compulsory-use requirements prescribed in 15 U.S.C. 1693k. Additionally, the employer shall allow an employee at least one means of fund access withdrawal per pay period, but not more frequently than once per week, at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement. An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages with a payroll debit card.

(4) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

**Source:** Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2; Laws 2014, LB560, § 4; Laws 2014, LB765, § 2.

**48-1231 Employee; claim for wages or unlawful retaliation or discrimination; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.**

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and



secures judgment on the claim, such employee shall be entitled to recover the full amount of the judgment and all costs of such suit, including reasonable attorney's fees. If the cause is taken to an appellate court and the employee recovers a judgment, the appellate court shall award reasonable attorney's fees to the employee. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this subsection. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) If an employee works for an employer that is not subject to the Nebraska Fair Employment Practice Act and such employee is aggrieved by a violation of section 48-1235, the employee may bring a suit against such employer in the proper court to recover the damages sustained by reason of such violation. If an employee prevails in a suit brought pursuant to this subsection, such employee shall be entitled to recover the full amount of the judgment and all costs of such suit, including reasonable attorney's fees. If the cause is taken to an appellate court and the employee recovers a judgment, the appellate court shall award reasonable attorney's fees to the employee.

(3) An employer who fails to furnish a wage statement under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

(4) If an employee institutes suit against an employer under subsection (1) or (2) of this section, any citation that is issued against such employer under section 48-1234 and that relates directly to the facts in dispute shall be admitted into evidence unless specifically excluded by the court. If a citation has been contested as described in subsection (3) of section 48-1234, it shall not be admitted into evidence under this subsection until after such contest has been resolved.

**Source:** Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3; Laws 2014, LB560, § 5; Laws 2020, LB1016, § 4.  
Operative date October 1, 2020.

**Cross References**

Nebraska Fair Employment Practice Act, see section 48-1125.

**48-1233 Commissioner of Labor; enforcement powers.**

The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of the Nebraska Wage Payment and Collection Act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

**Source:** Laws 2014, LB560, § 2.

**48-1234 Commissioner of Labor; citation; notice of penalty; employer contest; hearing; unpaid citation, effect on government contracts.**

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage

Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

(4) Any employer who has an unpaid citation for a violation of the Nebraska Wage Payment and Collection Act shall be barred from contracting with the state or any political subdivision until such citation is paid. If a citation has been contested as described in subsection (3) of this section, it shall not be considered an unpaid citation under this subsection until after such contest has been resolved.

(5) Citations issued under this section and the names of employers who have been issued a citation shall be made available to the public upon request, except that this subsection shall not apply to any citations that are being contested as described in subsection (3) of this section.

**Source:** Laws 2014, LB560, § 3; Laws 2019, LB359, § 7; Laws 2020, LB1016, § 5.

Operative date October 1, 2020.

**Cross References**

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

**48-1235 Employer; retaliation or discrimination prohibited.**

An employer shall not retaliate or discriminate against an employee because the employee:

(1) Files a suit or complaint under the Nebraska Wage Payment and Collection Act; or

(2) Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.

**Source:** Laws 2020, LB1016, § 3.

Operative date October 1, 2020.

**48-1236 Department of Labor; post compliance and enforcement information.**

No later than December 1 of each year, the Department of Labor shall post information on its web site regarding compliance with and enforcement of the Nebraska Wage Payment and Collection Act and shall provide notice to the Legislature that the information was posted. The information shall include, but not be limited to, (1) the total number of reports of unpaid wages filed with the department in the prior calendar year, (2) the total number of reports investigated in the prior calendar year, (3) the results of all investigations completed

in the prior calendar year, including, but not limited to, the number of cases in which wages were found to be owed to an employee, the number of cases in which the employer paid wages owed to the employee during the course of the investigation, and the number of cases in which it was found that no wages were owed to an employee, (4) the number of citations issued pursuant to section 48-1234 in the prior calendar year, (5) the total amount of wages owed to employees according to the citations issued in the prior calendar year, (6) the number of employers with more than two citations in the previous five years, and (7) the number and names of employers with at least one unpaid citation from the previous five years.

**Source:** Laws 2020, LB1016, § 6.  
Operative date October 1, 2020.

#### ARTICLE 14 DEFERRED COMPENSATION

Section  
48-1401. Political subdivisions; exception; deferred compensation plan; provisions; investment.

##### **48-1401 Political subdivisions; exception; deferred compensation plan; provisions; investment.**

(1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials.

(2) The compensation to be deferred may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights 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.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds shall become a part of the trust administered by the Public Employees Retirement Board pursuant to sections 84-1504 to 84-1506.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

**Source:** Laws 1977, LB 328, § 1; Laws 1997, LB 623, § 11; Laws 1999, LB 703, § 8; Laws 2012, LB916, § 18; Laws 2015, LB40, § 8.

## ARTICLE 16

## NEBRASKA WORKFORCE INVESTMENT ACT

## (b) NEBRASKA WORKFORCE INVESTMENT ACT

## Section

- 48-1616. Repealed. Laws 2015, LB 334, § 3.  
 48-1617. Repealed. Laws 2015, LB 334, § 3.  
 48-1618. Repealed. Laws 2015, LB 334, § 3.  
 48-1619. Repealed. Laws 2015, LB 334, § 3.  
 48-1620. Repealed. Laws 2015, LB 334, § 3.  
 48-1621. Repealed. Laws 2015, LB 334, § 3.  
 48-1622. Repealed. Laws 2015, LB 334, § 3.  
 48-1623. Repealed. Laws 2015, LB 334, § 3.  
 48-1624. Repealed. Laws 2015, LB 334, § 3.  
 48-1625. Repealed. Laws 2015, LB 334, § 3.  
 48-1626. Repealed. Laws 2015, LB 334, § 3.  
 48-1627. Repealed. Laws 2015, LB 334, § 3.

## (b) NEBRASKA WORKFORCE INVESTMENT ACT

**48-1616 Repealed. Laws 2015, LB 334, § 3.**

**48-1617 Repealed. Laws 2015, LB 334, § 3.**

**48-1618 Repealed. Laws 2015, LB 334, § 3.**

**48-1619 Repealed. Laws 2015, LB 334, § 3.**

**48-1620 Repealed. Laws 2015, LB 334, § 3.**

**48-1621 Repealed. Laws 2015, LB 334, § 3.**

**48-1622 Repealed. Laws 2015, LB 334, § 3.**

**48-1623 Repealed. Laws 2015, LB 334, § 3.**

**48-1624 Repealed. Laws 2015, LB 334, § 3.**

**48-1625 Repealed. Laws 2015, LB 334, § 3.**

**48-1626 Repealed. Laws 2015, LB 334, § 3.**

**48-1627 Repealed. Laws 2015, LB 334, § 3.**

## ARTICLE 17

## FARM LABOR CONTRACTORS

## Section

- 48-1706. Application fee.  
 48-1707. Repealed. Laws 2016, LB270, § 7.

**48-1706 Application fee.**

Each application shall be accompanied by a fee. The Commissioner of Labor shall establish the amount of the fee, which shall not exceed seven hundred fifty dollars, by rule and regulation. The fee shall be established with due regard for the costs of administering the Farm Labor Contractors Act. All fees so collected shall be deposited in the Contractor and Professional Employer Organization Registration Cash Fund.

**Source:** Laws 1987, LB 344, § 6; Laws 2002, LB 931, § 3; Laws 2016, LB270, § 2.

**48-1707 Repealed. Laws 2016, LB270, § 7.**

**ARTICLE 18**

**NEBRASKA AMUSEMENT RIDE ACT**

Section

- 48-1801. Transferred to section 81-5,190.
- 48-1802. Transferred to section 81-5,191.
- 48-1803. Transferred to section 81-5,192.
- 48-1804. Transferred to section 81-5,193.
- 48-1804.01. Transferred to section 81-5,194.
- 48-1805. Transferred to section 81-5,195.
- 48-1806. Transferred to section 81-5,196.
- 48-1807. Transferred to section 81-5,197.
- 48-1808. Transferred to section 81-5,198.
- 48-1809. Transferred to section 81-5,199.
- 48-1811. Transferred to section 81-5,200.
- 48-1812. Transferred to section 81-5,201.
- 48-1813. Transferred to section 81-5,202.
- 48-1814. Transferred to section 81-5,203.
- 48-1815. Transferred to section 81-5,204.
- 48-1816. Transferred to section 81-5,205.
- 48-1817. Transferred to section 81-5,206.
- 48-1818. Transferred to section 81-5,207.
- 48-1819. Transferred to section 81-5,208.
- 48-1820. Repealed. Laws 2019, LB301, § 87.

**48-1801 Transferred to section 81-5,190.**

**48-1802 Transferred to section 81-5,191.**

**48-1803 Transferred to section 81-5,192.**

**48-1804 Transferred to section 81-5,193.**

**48-1804.01 Transferred to section 81-5,194.**

**48-1805 Transferred to section 81-5,195.**

**48-1806 Transferred to section 81-5,196.**

**48-1807 Transferred to section 81-5,197.**

**48-1808 Transferred to section 81-5,198.**

**48-1809 Transferred to section 81-5,199.**

**48-1811 Transferred to section 81-5,200.**

**48-1812 Transferred to section 81-5,201.**

**48-1813 Transferred to section 81-5,202.**

**48-1814 Transferred to section 81-5,203.**

**48-1815 Transferred to section 81-5,204.**

**48-1816 Transferred to section 81-5,205.**

**48-1817 Transferred to section 81-5,206.**

**48-1818 Transferred to section 81-5,207.**

**48-1819 Transferred to section 81-5,208.**

**48-1820 Repealed. Laws 2019, LB301, § 87.**

**ARTICLE 21  
CONTRACTOR REGISTRATION**

Section

48-2107. Fees; exemption.

48-2115. Repealed. Laws 2016, LB270, § 7.

48-2117. Data base of contractors; contents; removal.

**48-2107 Fees; exemption.**

(1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee not to exceed forty dollars. The commissioner may adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures. The commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor and Professional Employer Organization Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

**Source:** Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4; Laws 2009, LB162, § 5; Laws 2016, LB270, § 3; Laws 2020, LB1016, § 7.  
Operative date July 25, 2020.

**48-2115 Repealed. Laws 2016, LB270, § 7.**

**48-2117 Data base of contractors; contents; removal.**

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967.

(2) The data base shall be accessible on the web site of the Department of Labor.

(3) The data base shall include, but not be limited to, the following information with respect to each registered contractor:

(a) Whether the contractor carries workers' compensation insurance in accordance with the Nebraska Workers' Compensation Act;

(b) Whether the contractor is self-insured in accordance with the Nebraska Workers' Compensation Act; or

(c) Whether the contractor is a sole proprietor with no employees and does not carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act.

(4) The information described in subdivision (3)(c) of this section, as it is listed in the data base, creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage for a claimed covered event.

(5) The information required under subsection (3) of this section and the presumption provided in subsection (4) of this section are solely for the purpose of establishing premiums for workers' compensation insurance and shall not affect liability under the Nebraska Workers' Compensation Act or compliance efforts pursuant to section 48-145.01.

(6) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

**Source:** Laws 2009, LB162, § 6; Laws 2019, LB139, § 1.

**Cross References**

Nebraska Revenue Act of 1967, see section 77-2701.

Nebraska Workers' Compensation Act, see section 48-1,110.

**ARTICLE 22**

**NON-ENGLISH-SPEAKING EMPLOYEES**

Section

48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.

**48-2213 Meatpacking industry worker rights coordinator; established; powers and duties.**

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the commissioner.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

(a) The right to organize;

(b) The right to a safe workplace;

(c) The right to adequate facilities and the opportunity to use them;

(d) The right to complete information;

(e) The right to understand the information provided;

(f) The right to existing state and federal benefits and rights;



- (g) The right to be free from discrimination;
- (h) The right to continuing training, including training of supervisors;
- (i) The right to compensation for work performed; and
- (j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry. The report submitted to the members of the Legislature shall be submitted electronically.

**Source:** Laws 2000, LB 1363, § 4; R.S.Supp.,2002, § 81-404; Laws 2003, LB 418, § 7; Laws 2012, LB782, § 65; Laws 2019, LB359, § 8.

## ARTICLE 23

### NEW HIRE REPORTING ACT

#### Section

48-2302. Terms, defined.

48-2307. Department; report.

#### **48-2302 Terms, defined.**

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

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

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff of less than sixty days in length, or an absence for disability or maternity.

**Source:** Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16; Laws 2012, LB1058, § 12.

**48-2307 Department; report.**

The department shall issue electronically a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221; Laws 2012, LB782, § 66.

**ARTICLE 25**

**CONVEYANCE SAFETY ACT**

Section

- 48-2501. Transferred to section 81-5,210.
- 48-2502. Transferred to section 81-5,211.
- 48-2503. Transferred to section 81-5,212.
- 48-2504. Transferred to section 81-5,213.
- 48-2506. Transferred to section 81-5,214.
- 48-2507. Transferred to section 81-5,215.
- 48-2508. Transferred to section 81-5,216.
- 48-2509. Transferred to section 81-5,217.
- 48-2510. Transferred to section 81-5,218.
- 48-2511. Transferred to section 81-5,219.
- 48-2512. Transferred to section 81-5,220.
- 48-2512.01. Transferred to section 81-5,221.
- 48-2513. Transferred to section 81-5,222.
- 48-2514. Transferred to section 81-5,223.
- 48-2515. Transferred to section 81-5,224.
- 48-2516. Transferred to section 81-5,225.
- 48-2517. Transferred to section 81-5,226.
- 48-2518. Transferred to section 81-5,227.
- 48-2519. Transferred to section 81-5,228.
- 48-2520. Transferred to section 81-5,229.
- 48-2521. Transferred to section 81-5,230.
- 48-2522. Transferred to section 81-5,231.
- 48-2523. Transferred to section 81-5,232.
- 48-2524. Transferred to section 81-5,233.
- 48-2525. Transferred to section 81-5,234.
- 48-2526. Transferred to section 81-5,235.
- 48-2527. Transferred to section 81-5,236.
- 48-2528. Transferred to section 81-5,237.
- 48-2529. Transferred to section 81-5,238.
- 48-2530. Transferred to section 81-5,239.
- 48-2531. Transferred to section 81-5,240.
- 48-2532. Transferred to section 81-5,241.
- 48-2533. Transferred to section 81-5,242.

**48-2501 Transferred to section 81-5,210.**

**48-2502 Transferred to section 81-5,211.**

48-2503 Transferred to section 81-5,212.  
48-2504 Transferred to section 81-5,213.  
48-2506 Transferred to section 81-5,214.  
48-2507 Transferred to section 81-5,215.  
48-2508 Transferred to section 81-5,216.  
48-2509 Transferred to section 81-5,217.  
48-2510 Transferred to section 81-5,218.  
48-2511 Transferred to section 81-5,219.  
48-2512 Transferred to section 81-5,220.  
48-2512.01 Transferred to section 81-5,221.  
48-2513 Transferred to section 81-5,222.  
48-2514 Transferred to section 81-5,223.  
48-2515 Transferred to section 81-5,224.  
48-2516 Transferred to section 81-5,225.  
48-2517 Transferred to section 81-5,226.  
48-2518 Transferred to section 81-5,227.  
48-2519 Transferred to section 81-5,228.  
48-2520 Transferred to section 81-5,229.  
48-2521 Transferred to section 81-5,230.  
48-2522 Transferred to section 81-5,231.  
48-2523 Transferred to section 81-5,232.  
48-2524 Transferred to section 81-5,233.  
48-2525 Transferred to section 81-5,234.  
48-2526 Transferred to section 81-5,235.  
48-2527 Transferred to section 81-5,236.  
48-2528 Transferred to section 81-5,237.  
48-2529 Transferred to section 81-5,238.  
48-2530 Transferred to section 81-5,239.  
48-2531 Transferred to section 81-5,240.  
48-2532 Transferred to section 81-5,241.  
48-2533 Transferred to section 81-5,242.

## ARTICLE 26

## NEBRASKA UNIFORM ATHLETE AGENTS ACT

## Section

- 48-2609. Registration and renewal fees.  
48-2610. Required form of contract.  
48-2614. Prohibited conduct.

**48-2609 Registration and renewal fees.**

(1) An application for registration or renewal of registration must be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nebraska Uniform Athlete Agents Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 2009, LB292, § 9; Laws 2020, LB910, § 17.  
Operative date July 1, 2021.

**48-2610 Required form of contract.**

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE**

(1) IF YOU ENTER INTO NEGOTIATIONS FOR, OR SIGN, A PROFESSIONAL-SPORTS-SERVICES CONTRACT, YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

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(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

**Source:** Laws 2009, LB292, § 10; Laws 2020, LB962, § 10.  
Effective date November 14, 2020.

**48-2614 Prohibited conduct.**

(1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) Give any materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) Initiate contact with a student-athlete unless registered under the Nebraska Uniform Athlete Agents Act;

(b) Refuse or fail to retain or permit inspection of the records required to be retained by section 48-2613;

(c) Fail to register when required by section 48-2604;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that entering into negotiations for, or signing, a professional-sports-services contract may make the student-athlete ineligible to participate as a student-athlete in that sport.

**Source:** Laws 2009, LB292, § 14; Laws 2020, LB962, § 11.  
Effective date November 14, 2020.

**ARTICLE 27**

**PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT**

Section  
48-2710. Fees.

**48-2710 Fees.**

(1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited

registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the Contractor and Professional Employer Organization Registration Cash Fund.

**Source:** Laws 2010, LB579, § 10; Laws 2016, LB270, § 4.

## ARTICLE 28

### NEBRASKA INNOVATION AND HIGH WAGE EMPLOYMENT ACT

#### Section

- 48-2801. Repealed. Laws 2015, LB 5, § 1.  
 48-2802. Repealed. Laws 2015, LB 5, § 1.  
 48-2803. Repealed. Laws 2015, LB 5, § 1.  
 48-2804. Repealed. Laws 2015, LB 5, § 1.  
 48-2805. Repealed. Laws 2015, LB 5, § 1.

**48-2801 Repealed. Laws 2015, LB 5, § 1.**

**48-2802 Repealed. Laws 2015, LB 5, § 1.**

**48-2803 Repealed. Laws 2015, LB 5, § 1.**

**48-2804 Repealed. Laws 2015, LB 5, § 1.**

**48-2805 Repealed. Laws 2015, LB 5, § 1.**

## ARTICLE 29

### EMPLOYEE CLASSIFICATION ACT

#### Section

- 48-2903. Presumption; act; how construed.  
 48-2907. Commissioner; citation; notice of penalty; contractor contest; hearing; unpaid administrative penalty, effect on government contracts.  
 48-2909. Report; contents.  
 48-2911. Contracts; affidavit required; rescission.

**48-2903 Presumption; act; how construed.**

(1) An individual performing construction labor services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless:

(a) The individual meets the criteria found in subdivision (5) of section 48-604;

(b) The individual has been registered as a contractor pursuant to the Contractor Registration Act prior to commencing construction work for the contractor; and

(c) The individual has been assigned a combined tax rate pursuant to sections 48-649 to 48-649.04 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(2) An individual performing delivery services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless the individual meets the criteria found in subdivision

(5) of section 48-604 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(3) The Employee Classification Act shall not be construed to affect or apply to a common-law or statutory action providing for recovery in tort and shall not be construed to affect or change the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim. The act shall also not be construed to affect or alter the use of the term independent contractor as interpreted by the Department of Revenue and shall not be construed to affect any action brought pursuant to the Nebraska Revenue Act of 1967.

**Source:** Laws 2010, LB563, § 3; Laws 2017, LB172, § 84.

**Cross References**

Contractor Registration Act, see section 48-2101.  
Nebraska Revenue Act of 1967, see section 77-2701.

**48-2907 Commissioner; citation; notice of penalty; contractor contest; hearing; unpaid administrative penalty, effect on government contracts.**

(1) In addition to any other fines or penalties provided by law, the commissioner may issue a citation to a contractor when an investigation reveals that a contractor has violated the Employee Classification Act.

(2) When a citation is issued, the commissioner shall notify the contractor of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall be not more than five hundred dollars per misclassified individual for the first offense and not more than five thousand dollars per misclassified individual for each second or subsequent offense.

(3) The contractor has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

(4) A contractor who is assessed an administrative penalty for a violation of the Employee Classification Act shall pay such administrative penalty no later than ten days after the date the penalty becomes final and not subject to further appeal. A contractor who has an unpaid administrative penalty in violation of this subsection shall be barred from contracting with the state or any political subdivision until such administrative penalty is paid.

**Source:** Laws 2010, LB563, § 7; Laws 2018, LB953, § 2; Laws 2020, LB1016, § 8.

Operative date July 25, 2020.

**Cross References**

Administrative Procedure Act, see section 84-920.

**48-2909 Report; contents.**

The department shall provide electronically an annual report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines

collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

**Source:** Laws 2010, LB563, § 9; Laws 2012, LB782, § 67.

**48-2911 Contracts; affidavit required; rescission.**

Any contract between the state or a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the state or political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with section 4-114, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to section 48-2907 or 48-2912. Such contract shall also require that the contractor follow the provisions of the Employee Classification Act. A violation of the act by a contractor is grounds for rescission of the contract by the state or political subdivision.

**Source:** Laws 2010, LB563, § 11; Laws 2018, LB953, § 3.

**ARTICLE 31**

**SUBSIDIZED EMPLOYMENT PILOT PROGRAM**

Section

- 48-3101. Repealed. Laws 2020, LB741, § 1.
- 48-3102. Repealed. Laws 2020, LB741, § 1.
- 48-3103. Repealed. Laws 2020, LB741, § 1.
- 48-3104. Repealed. Laws 2020, LB741, § 1.
- 48-3105. Repealed. Laws 2020, LB741, § 1.
- 48-3106. Repealed. Laws 2020, LB741, § 1.
- 48-3107. Repealed. Laws 2020, LB741, § 1.
- 48-3108. Repealed. Laws 2020, LB741, § 1.

**48-3101 Repealed. Laws 2020, LB741, § 1.**

**48-3102 Repealed. Laws 2020, LB741, § 1.**

**48-3103 Repealed. Laws 2020, LB741, § 1.**

**48-3104 Repealed. Laws 2020, LB741, § 1.**

**48-3105 Repealed. Laws 2020, LB741, § 1.**

**48-3106 Repealed. Laws 2020, LB741, § 1.**

**48-3107 Repealed. Laws 2020, LB741, § 1.**



**48-3108 Repealed. Laws 2020, LB741, § 1.**

**ARTICLE 32**  
**FACILITATING BUSINESS RAPID RESPONSE**  
**TO STATE DECLARED DISASTERS ACT**

Section

48-3201. Act, how cited.

48-3202. Terms, defined.

48-3203. Out-of-state business; applicability of state or local employment, licensing, or registration requirements; out-of-state employee; how treated.

48-3204. Out-of-state business; notification to Department of Revenue; information; contents; registered business; duties.

48-3205. Work pursuant to request for bid or request for proposals; how treated.

**48-3201 Act, how cited.**

Sections 48-3201 to 48-3205 shall be known and may be cited as the Facilitating Business Rapid Response to State Declared Disasters Act.

**Source:** Laws 2016, LB913, § 1.

**48-3202 Terms, defined.**

For purposes of the Facilitating Business Rapid Response to State Declared Disasters Act:

(1) Declared state disaster or emergency means a disaster or emergency event (a) for which a Governor's state of emergency proclamation has been issued or (b) that the President of the United States has declared to be a major disaster or emergency;

(2) Disaster period means the period of time that begins ten days before the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or emergency, whichever occurs first, and extending for a period of sixty calendar days following the end of the period specified in the proclamation or declaration or sixty calendar days after the proclamation or declaration if no end is provided. The Governor may extend the disaster period as warranted;

(3) Infrastructure means real and personal property, including buildings, offices, power lines, cable lines, poles, communication lines, pipes, structures, equipment, and related support facilities, owned or used by a public utility, communications network, broadband or Internet service provider, cable or video service provider, natural gas distribution system, or water pipeline that provides service to more than one customer or person;

(4)(a) Out-of-state business means a business entity:

(i) That does not have a presence in the state;

(ii) That does not conduct business in the state;

(iii) That has no registrations, tax filings, or nexus in the state before the declared state disaster or emergency; and

(iv) Whose assistance in repairing, renovating, installing, or building infrastructure or rendering services or other business activities related to a declared state disaster or emergency is requested by the state, a county, city, village, or other political subdivision of the state, or a registered business that owns or uses infrastructure.

(b) Out-of-state business includes a business entity that is affiliated with a registered business solely through common ownership as long as that business entity does not have any registrations, tax filings, or nexus in the state before the declared state disaster or emergency. For purposes of this section, a prior registration as an out-of-state business for a declared state disaster or emergency shall not be considered a registration in this state;

(5) Out-of-state employee means a nonresident individual who does not work in the state except for disaster or emergency related work during a disaster period; and

(6) Registered business means a business entity that is registered or licensed to do business in the state before the declared state disaster or emergency.

**Source:** Laws 2016, LB913, § 2.

**48-3203 Out-of-state business; applicability of state or local employment, licensing, or registration requirements; out-of-state employee; how treated.**

(1) An out-of-state business that conducts operations within the state for purposes of assisting in repairing, renovating, installing, or building infrastructure or rendering services or other business activities related to a declared state disaster or emergency during the disaster period shall not be considered to have established a level of presence that would subject the out-of-state business or any of its out-of-state employees to any of the following state or local employment, licensing, or registration requirements:

(a) Registration with the Secretary of State;

(b) Withholding or income tax registration, filing, or remitting requirements; and

(c) Sales, use, or ad valorem tax on equipment brought into the state temporarily for use or consumption during the disaster period if such equipment does not remain in the state after the disaster period.

(2) An out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes, to be subjected to tax withholdings, or to file and pay any other state or local income or withholding tax or fee for work repairing, renovating, installing, or building infrastructure or rendering services or other business activities during the disaster period.

(3) After the conclusion of a disaster period, an out-of-state business or out-of-state employee that remains in the state is fully subject to the state or local employment, licensing, or registration requirements listed in this section or that were otherwise suspended under the Facilitating Business Rapid Response to State Declared Disasters Act during the disaster period.

**Source:** Laws 2016, LB913, § 3.

**48-3204 Out-of-state business; notification to Department of Revenue; information; contents; registered business; duties.**

(1) An out-of-state business shall provide notification to the Department of Revenue within ten days after entry to the state during a disaster period that the out-of-state business is in the state for purposes of responding to the declared state disaster or emergency. The out-of-state business shall provide to the department information related to the out-of-state business including, but not limited to, the following:

- (a) Name;
- (b) State of domicile;
- (c) Principal business address;
- (d) Federal employer identification number;
- (e) The date when the out-of-state business entered the state; and
- (f) Contact information while the out-of-state business is in this state.

(2) A registered business shall provide the notification required in subsection (1) of this section for an affiliate of the registered business that enters the state as an out-of-state business. The notification under this subsection shall also include contact information for the registered business in the state.

**Source:** Laws 2016, LB913, § 4.

**48-3205 Work pursuant to request for bid or request for proposals; how treated.**

The Facilitating Business Rapid Response to State Declared Disasters Act shall not grant exemptions authorized by the act to any out-of-state business performing work pursuant to a request for bid or request for proposals by a state agency or political subdivision.

**Source:** Laws 2016, LB913, § 5.

### ARTICLE 33

#### NEBRASKA WORKFORCE INNOVATION AND OPPORTUNITY ACT

Section

- 48-3301. Act, how cited.
- 48-3302. Legislative findings and declarations.
- 48-3303. Career pathway, defined.
- 48-3304. Commissioner of Labor; performance report; duties.
- 48-3305. Department of Labor; powers; rules and regulations.

**48-3301 Act, how cited.**

Sections 48-3301 to 48-3305 shall be known and may be cited as the Nebraska Workforce Innovation and Opportunity Act.

**Source:** Laws 2016, LB1110, § 1.

**48-3302 Legislative findings and declarations.**

The Legislature finds and declares:

(1) In order for Nebraska to remain prosperous and competitive, it needs to have a well-educated and highly skilled workforce;

(2) The following principles shall guide the state's workforce investment system:

(a) Workforce investment programs and services shall be responsive to the needs of employers, workers, and students by accomplishing the following:

(i) Providing Nebraska students and workers with the skills necessary to successfully compete in the global economy;

(ii) Producing greater numbers of individuals who obtain industry-recognized certificates and career-oriented degrees in competitive and emerging industry sectors and filling critical labor market skills gaps;

(iii) Adapting to rapidly changing local and regional labor markets as specific workforce skill requirements change over time;

(iv) Preparing workers for jobs that pay well and foster economic security and upward mobility; and

(v) Aligning employment programs, resources, and planning efforts regionally around industry sectors that drive regional employment to connect services and training directly to jobs;

(b) State and local workforce development boards are encouraged to collaborate with other public and private institutions, including businesses, unions, nonprofit organizations, schools from kindergarten through grade twelve, career technical education programs, adult career technical education and basic skills programs, apprenticeships, community college career technical education and basic skills programs, entrepreneurship training programs, where appropriate, and county-based social and employment services, to better align resources across workforce, training, education, and social service delivery systems and build a well-articulated workforce investment system by accomplishing the following:

(i) Adopting local and regional training and education strategies that build on the strengths and fill the gaps in the education and workforce development pipeline in order to address the needs of job seekers, workers, and employers within regional labor markets by supporting sector strategies; and

(ii) Leveraging resources across education and workforce training delivery systems to build career pathways and fill critical skills gaps;

(c) Workforce investment programs and services shall be data-driven and evidence-based when setting priorities, investing resources, and adopting practices;

(d) Workforce investment programs and services shall develop strong partnerships with the private sector, ensuring industry involvement in needs assessment, planning, and program evaluation, and:

(i) Shall encourage industry involvement by developing strong partnerships with an industry's employers and the unions that represent the industry's workers; and

(ii) May consider the needs of employers and businesses of all sizes, including large, medium, small, and microenterprises, when setting priorities, investing resources, and adopting practices;

(e) Workforce investment programs and services shall be outcome-oriented and accountable, measuring results for program participants, including, but not limited to, outcomes related to program completion, employment, and earnings; and

(f) Programs and services shall be accessible to employers, the self-employed, workers, and students who may benefit from their operation, including individuals with employment barriers, such as persons with economic, physical, or other barriers to employment;

(3) Screening designed to detect unidentified disabilities, including learning disabilities, improves workforce preparation and enhances the use of employment and training resources;

(4) Section 134(c)(2) of the federal Workforce Innovation and Opportunity Act, 29 U.S.C. 3174(c)(2), allows for the use of funds for the initial assessment

of skill levels, aptitudes, abilities, and support services, including, when appropriate, comprehensive and specialized assessments of skill levels and service needs, including, but not limited to, diagnostic testing and the use of other assessment tools and indepth interviewing and evaluation to identify employment barriers and appropriate employment goals; and

(5) One-stop career centers are encouraged to maximize the use of federal Workforce Innovation and Opportunity Act resources and other federal and state workforce development resources for screening designed to detect unidentified disabilities, and if indicated, to provide appropriate diagnostic assessment.

**Source:** Laws 2016, LB1110, § 2.

#### **48-3303 Career pathway, defined.**

For purposes of the Nebraska Workforce Innovation and Opportunity Act, career pathway means an identified series of positions, work experiences, or educational benchmarks or credentials with multiple access points that offers occupational and financial advancement within a specified career field or related fields over time. Career pathways offer combined programs of rigorous and high-quality education, training, and other services that do all of the following:

(1) Align with the skill needs of industries in the state and regional economies;

(2) Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the National Apprenticeship Act, 29 U.S.C. 50 et seq., except apprenticeships under 29 U.S.C. 3226;

(3) Include counseling to support an individual in achieving the individual's education and career goals;

(4) Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation;

(5) Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(6) Enable an individual to attain a secondary school diploma or its recognized equivalent and at least one recognized postsecondary credential; and

(7) Help an individual enter or advance within a specific occupation.

**Source:** Laws 2016, LB1110, § 3.

#### **48-3304 Commissioner of Labor; performance report; duties.**

On or before November 30 of each year, the Commissioner of Labor shall submit a copy of the performance report required by section 116(d) of the federal Workforce Innovation and Opportunity Act, 29 U.S.C. 3141(d), to the Governor, the Legislature, and the Nebraska Workforce Development Board. The report shall cover the prior program year and shall include the total amount of federal funding provided to the state and to each of the local workforce development areas for the adult, youth, and dislocated worker

programs and the amount expended within each program for training services. The report to the Legislature shall be submitted electronically.

**Source:** Laws 2016, LB1110, § 4.

**48-3305 Department of Labor; powers; rules and regulations.**

(1) The Department of Labor shall have the authority to administer the requirements of Title I of the federal Workforce Innovation and Opportunity Act, including, but not limited to, establishing accounting, monitoring, auditing, and reporting procedures and criteria in order to ensure state compliance with the objectives and requirements of Title I of the federal Workforce Innovation and Opportunity Act.

(2) The department may adopt and promulgate any rules and regulations necessary to implement the Nebraska Workforce Innovation and Opportunity Act.

**Source:** Laws 2016, LB1110, § 5.

**ARTICLE 34**

**SECTOR PARTNERSHIP PROGRAM ACT**

Section

- 48-3401. Act, how cited.
- 48-3402. Legislative findings, declarations, and intent.
- 48-3403. Terms, defined.
- 48-3404. Sector Partnership Program; created; Department of Labor; duties; Department of Economic Development; contracts authorized; completed studies; public information.
- 48-3405. Sector Partnership Program Fund; created; use; investment.
- 48-3406. Report.
- 48-3407. Rules and regulations.

**48-3401 Act, how cited.**

Sections 48-3401 to 48-3407 shall be known and may be cited as the Sector Partnership Program Act.

**Source:** Laws 2016, LB1110, § 6.

**48-3402 Legislative findings, declarations, and intent.**

(1) The Legislature finds and declares that sector partnerships are a proven strategy for engaging employers in key industries, helping workers train for and access good jobs, and coordinating education, training, and workforce development activities in response to industry needs.

(2) It is the intent of the Legislature and the purpose of the Sector Partnership Program Act to support local sector partnerships that will close skill gaps in high-demand sectors of business and industry. By conducting labor availability and skills gap studies, the Sector Partnership Program will connect education and training providers with employers and will ensure that the state's workforce and economic development activities align with the needs of employers in the state's key industries.

**Source:** Laws 2016, LB1110, § 7.

**48-3403 Terms, defined.**

For purposes of the Sector Partnership Program Act:

- (1) Department means the Department of Labor;
- (2) Local area means a workforce development area authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska;
- (3) Local sector partnership or partnership means a workforce collaborative that organizes key stakeholders in a particular sector of business or industry in a local area into a working group that focuses on the shared goals and human resources needs of such sector;
- (4) Local workforce development board means a local workforce development board authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska; and
- (5) Nebraska Workforce Development Board means the state workforce development board authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska.

**Source:** Laws 2016, LB1110, § 8.

**48-3404 Sector Partnership Program; created; Department of Labor; duties; Department of Economic Development; contracts authorized; completed studies; public information.**

(1) The Sector Partnership Program is created. The program shall be administered by the Department of Labor in conjunction with the Department of Economic Development. In establishing and administering the program, the Department of Labor shall consult with the Nebraska Workforce Development Board, the Department of Economic Development, and the State Department of Education.

(2) The Department of Labor, in conjunction with the Department of Economic Development, shall:

(a) Establish a study process to conduct labor availability and skills gap studies;

(b) Determine the laborshed areas of the state; and

(c) Complete labor availability and skills gap studies for all laborshed areas of the state on a rotating basis as determined by the Department of Labor.

(3) The Department of Labor and the Department of Economic Development may contract with other entities to conduct additional labor availability, skills gap, and sector partnership studies.

(4) The Department of Labor, in conjunction with the Department of Economic Development, shall provide technical assistance to local sector partnerships and persons interested in forming partnerships. Technical assistance may include providing: (a) Direction and counseling on forming and sustaining partnerships; (b) professional development and capacity building through academies, toolkits, and peer sharing networks; (c) customized labor market and economic analysis; and (d) information on career pathways, worker training resources, skill standards, and industry-based certifications.

(5) Except to the extent otherwise provided in state or federal law, all completed labor availability and skills gap studies shall be public information.

**Source:** Laws 2016, LB1110, § 9.

**48-3405 Sector Partnership Program Fund; created; use; investment.**

(1) The Sector Partnership Program Fund is created. The fund shall be administered by the Department of Labor. The fund shall be used to pursue sector partnership activities, including, but not limited to, labor availability and skills gap studies by the Department of Labor and the Department of Economic Development pursuant to the Sector Partnership Program Act. The fund may also be used for administrative costs of the Department of Labor and the Department of Economic Development associated with sector partnership activities.

(2) The fund shall consist of such money as is: (a) Transferred to the fund from the Job Training Cash Fund and the Nebraska Training and Support Cash Fund; (b) otherwise appropriated to the fund by the Legislature; (c) donated as gifts, bequests, or other contributions to the fund from public or private entities; and (d) made available by any department or agency of the United States if so directed by such department or agency. 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 2016, LB1110, § 10.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-3406 Report.**

On or before July 31 of each year, the department shall provide an annual report to the Governor and the Business and Labor Committee of the Legislature. The report submitted to the Legislature shall be submitted electronically. The report shall detail the process and results of the labor availability and skills gap studies.

**Source:** Laws 2016, LB1110, § 11.

**48-3407 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the Sector Partnership Program Act.

**Source:** Laws 2016, LB1110, § 12.

**ARTICLE 35**

**WORKPLACE PRIVACY ACT**

**Section**

- 48-3501. Act, how cited.
- 48-3502. Terms, defined.
- 48-3503. Employer; prohibited acts.
- 48-3504. Waiver of right or protection under act prohibited.
- 48-3505. Retaliation or discrimination.
- 48-3506. Employee acts prohibited.
- 48-3507. Employer's rights not limited by act.
- 48-3508. Law enforcement agency rights.
- 48-3509. Personal Internet account; employer; duty; liability.
- 48-3510. Employer; limit on liability and use of certain information.
- 48-3511. Civil action authorized.

**48-3501 Act, how cited.**



Sections 48-3501 to 48-3511 shall be known and may be cited as the Workplace Privacy Act.

**Source:** Laws 2016, LB821, § 1.

**48-3502 Terms, defined.**

For purposes of the Workplace Privacy Act:

(1) Adverse action means the discharge of an employee, a threat against an employee, or any other act against an employee that negatively affects the employee's employment;

(2) Applicant means a prospective employee applying for employment;

(3) Electronic communication device means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device;

(4) Employee means an individual employed by an employer;

(5) Employer means a public or nonpublic entity or an individual engaged in a business, an industry, a profession, a trade, or other enterprise in the state, including any agent, representative, or designee acting directly or indirectly in the interest of such an employer; and

(6)(a) Personal Internet account means an individual's online account that requires login information in order to access or control the account.

(b) Personal Internet account does not include:

(i) An online account that an employer or educational institution supplies or pays for, except when the employer or educational institution pays only for additional features or enhancements to the online account; or

(ii) An online account that is used exclusively for a business purpose of the employer.

**Source:** Laws 2016, LB821, § 2.

**48-3503 Employer; prohibited acts.**

No employer shall:

(1) Require or request that an employee or applicant provide or disclose any user name or password or any other related account information in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communication device;

(2) Require or request that an employee or applicant log into a personal Internet account by way of an electronic communication device in the presence of the employer in a manner that enables the employer to observe the contents of the employee's or applicant's personal Internet account or provides the employer access to the employee's or applicant's personal Internet account;

(3) Require an employee or applicant to add anyone, including the employer, to the list of contacts associated with the employee's or applicant's personal Internet account or require or otherwise coerce an employee or applicant to change the settings on the employee's or applicant's personal Internet account which affects the ability of others to view the content of such account; or

(4) Take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failure to provide or disclose any of the information

or to take any of the actions specified in subdivisions (1) through (3) of this section.

**Source:** Laws 2016, LB821, § 3.

**48-3504 Waiver of right or protection under act prohibited.**

An employer shall not require an employee or applicant to waive or limit any protection granted under the Workplace Privacy Act as a condition of continued employment or of applying for or receiving an offer of employment. Any agreement to waive any right or protection under the act is against the public policy of this state and is void and unenforceable.

**Source:** Laws 2016, LB821, § 4.

**48-3505 Retaliation or discrimination.**

An employer shall not retaliate or discriminate against an employee or applicant because the employee or applicant:

- (1) Files a complaint under the Workplace Privacy Act; or
- (2) Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.

**Source:** Laws 2016, LB821, § 5.

**48-3506 Employee acts prohibited.**

An employee shall not download or transfer an employer's private proprietary information or private financial data to a personal Internet account without authorization from the employer. This section shall not apply if the proprietary information or the financial data is otherwise disclosed by the employer to the public pursuant to other provisions of law or practice.

**Source:** Laws 2016, LB821, § 6.

**48-3507 Employer's rights not limited by act.**

Nothing in the Workplace Privacy Act limits an employer's right to:

- (1) Promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use and personal Internet account use;
- (2) Request or require an employee or applicant to disclose access information to the employer to gain access to or operate:
  - (a) An electronic communication device supplied by or paid for in whole or in part by the employer; or
  - (b) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;
- (3) Restrict or prohibit an employee's access to certain web sites while using an electronic communication device supplied by or paid for in whole or in part by the employer or while using an employer's network or resources, to the extent permissible under applicable laws;
- (4) Monitor, review, access, or block electronic data stored on an electronic communication device supplied by or paid for in whole or in part by the

employer or stored on an employer's network, to the extent permissible under applicable laws;

(5) Access information about an employee or applicant that is in the public domain or is otherwise obtained in compliance with the Workplace Privacy Act;

(6) Conduct an investigation or require an employee to cooperate in an investigation under any of the following circumstances:

(a) If the employer has specific information about potentially wrongful activity taking place on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or

(b) If the employer has specific information about an unauthorized download or transfer of the employer's private proprietary information, private financial data, or other confidential information to an employee's personal Internet account;

(7) Take adverse action against an employee for downloading or transferring an employer's private proprietary information or private financial data to a personal Internet account without the employer's authorization;

(8) Comply with requirements to screen employees or applicants before hiring or to monitor or retain employee communications that are established by state or federal law or by a self-regulatory organization as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1, 2016; or

(9) Comply with a law enforcement investigation conducted by a law enforcement agency.

**Source:** Laws 2016, LB821, § 7.

#### **48-3508 Law enforcement agency rights.**

Nothing in the Workplace Privacy Act limits a law enforcement agency's right to screen employees or applicants in connection with a law enforcement employment application or a law enforcement officer conduct investigation.

**Source:** Laws 2016, LB821, § 8.

#### **48-3509 Personal Internet account; employer; duty; liability.**

(1) The Workplace Privacy Act does not create a duty for an employer to search or monitor the activity of a personal Internet account.

(2) An employer is not liable under the act for failure to request or require that an employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal Internet account.

**Source:** Laws 2016, LB821, § 9.

#### **48-3510 Employer; limit on liability and use of certain information.**

If an employer inadvertently learns the user name, password, or other means of access to an employee's or applicant's personal Internet account through the use of otherwise lawful technology that monitors the employer's computer network or employer-provided electronic communication devices for service quality or security purposes, the employer is not liable for obtaining the information, but the employer shall not use the information to access the

employee's or applicant's personal Internet account or share the information with anyone. The employer shall delete such information as soon as practicable.

**Source:** Laws 2016, LB821, § 10.

**48-3511 Civil action authorized.**

Upon violation of the Workplace Privacy Act, an aggrieved employee or applicant may, in addition to any other available remedy, institute a civil action within one year after the date of the alleged violation or the discovery of the alleged violation, whichever is later. The employee or applicant shall file an action directly in the district court of the county where such alleged violation occurred. The district court shall file and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs.

**Source:** Laws 2016, LB821, § 11; Laws 2018, LB193, § 85.

**ARTICLE 36**

**NEBRASKA FAIR PAY TO PLAY ACT**

Section

- 48-3601. Act, how cited.
- 48-3602. Terms, defined.
- 48-3603. Name, image, or likeness rights or athletic reputation; compensation of student-athlete, effect.
- 48-3604. Name, image, or likeness or athletic reputation; contract, disclosure required; limitation.
- 48-3605. Name, image, and likeness rights or athletic reputation; contract, restrictions; conflict with team contract, effect.
- 48-3606. Student-athlete; obtain professional representation; effect.
- 48-3607. Act; effect on contracts.
- 48-3608. Civil action authorized; damages, procedure; limitation.
- 48-3609. Act, applicability.

**48-3601 Act, how cited.**

Sections 48-3601 to 48-3609 shall be known and may be cited as the Nebraska Fair Pay to Play Act.

**Source:** Laws 2020, LB962, § 1.

Effective date November 14, 2020.

**48-3602 Terms, defined.**

For purposes of the Nebraska Fair Pay to Play Act:

(1) Athletic grant-in-aid means the money given to a student-athlete by a postsecondary institution for tuition, fees, room, board, and textbooks as consideration for the student-athlete's participation in an intercollegiate sport for such postsecondary institution and does not include compensation for the use of the student-athlete's name, image, or likeness rights or athletic reputation;

(2) Collegiate athletic association means any athletic association, conference, or other group or organization with authority over intercollegiate sports;

(3) Compensation for the use of a student-athlete's name, image, or likeness rights or athletic reputation includes, but is not limited to, consideration received pursuant to an endorsement contract as defined in section 48-2602;

- (4) Intercollegiate sport has the same meaning as in section 48-2602;
- (5) Postsecondary institution has the same meaning as in section 85-2403;
- (6) Professional representation includes, but is not limited to, representation provided by an athlete agent holding a certificate of registration under the Nebraska Uniform Athlete Agents Act, a financial advisor registered under the Securities Act of Nebraska, or an attorney admitted to the bar by order of the Supreme Court of this state;
- (7) Sponsor means an individual or organization that pays money or provides goods or services in exchange for advertising rights;
- (8) Student-athlete has the same meaning as in section 48-2602; and
- (9) Team contract means a contract between a postsecondary institution or a postsecondary institution's athletic department and a sponsor.

**Source:** Laws 2020, LB962, § 2.

Effective date November 14, 2020.

**Cross References**

Nebraska Uniform Athlete Agents Act, see section 48-2601.

Securities Act of Nebraska, see section 8-1123.

**48-3603 Name, image, or likeness rights or athletic reputation; compensation of student-athlete, effect.**

(1) No postsecondary institution shall uphold any rule, requirement, standard, or limitation that prevents a student-athlete from fully participating in an intercollegiate sport for such postsecondary institution because such student-athlete earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(2) No collegiate athletic association shall penalize a student-athlete or prevent a student-athlete from fully participating in an intercollegiate sport because such student-athlete earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(3) No collegiate athletic association shall penalize a postsecondary institution or prevent a postsecondary institution from fully participating in an intercollegiate sport because a student-athlete participating in an intercollegiate sport for such postsecondary institution earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(4) No postsecondary institution shall allow compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation to affect the duration, amount, or eligibility for or renewal of any athletic grant-in-aid or other institutional scholarship, except that compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation may be used for the calculation of income for determining eligibility for need-based financial aid.

**Source:** Laws 2020, LB962, § 3.

Effective date November 14, 2020.

**48-3604 Name, image, or likeness or athletic reputation; contract, disclosure required; limitation.**

Any student-athlete who enters into a contract that provides compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation shall disclose such contract to an official of the postsecondary institution for which such student-athlete participates in an intercollegiate sport. The official to which such contract shall be disclosed shall be designated by each postsecondary institution, and the designation shall be communicated in writing to each student-athlete participating in an intercollegiate sport for such postsecondary institution. Unless otherwise required by law, each postsecondary institution shall be prohibited from disclosing any terms of such contract that the student-athlete or the student-athlete's professional representation deems to be a trade secret or otherwise nondisclosable.

**Source:** Laws 2020, LB962, § 4.  
Effective date November 14, 2020.

**48-3605 Name, image, and likeness rights or athletic reputation; contract, restrictions; conflict with team contract, effect.**

(1) No student-athlete shall enter into a contract with a sponsor that provides compensation to the student-athlete for use of the student-athlete's name, image, and likeness rights or athletic reputation if (a) such contract requires such student-athlete to display such sponsor's apparel or to otherwise advertise for the sponsor during official team activities and (b) compliance with such contract requirement would conflict with a team contract. Any postsecondary institution asserting such conflict shall disclose to the student-athlete and the student-athlete's professional representation, if applicable, the full team contract that is asserted to be in conflict. The student-athlete and the student-athlete's professional representation, if applicable, shall be prohibited from disclosing any terms of a team contract that the postsecondary institution deems to be a trade secret or otherwise nondisclosable.

(2) No team contract shall prevent a student-athlete from receiving compensation for the use of such student-athlete's name, image, and likeness rights or athletic reputation when the student-athlete is not engaged in official team activities.

**Source:** Laws 2020, LB962, § 5.  
Effective date November 14, 2020.

**48-3606 Student-athlete; obtain professional representation; effect.**

(1) No postsecondary institution or collegiate athletic association shall penalize a student-athlete or prevent a student-athlete from fully participating in an intercollegiate sport because such student-athlete obtains professional representation in relation to a contract or legal matter.

(2) No collegiate athletic association shall penalize a postsecondary institution or prevent a postsecondary institution from fully participating in an intercollegiate sport because a student-athlete participating in an intercollegiate sport for such postsecondary institution obtains professional representation in relation to a contract or legal matter.

**Source:** Laws 2020, LB962, § 6.  
Effective date November 14, 2020.

**48-3607 Act; effect on contracts.**

(1) The Nebraska Fair Pay to Play Act shall not be applied in a manner that violates any contract in effect prior to the date determined by a postsecondary institution pursuant to section 48-3609 with regard to such postsecondary institution or any student-athlete who participates in an intercollegiate sport for such postsecondary institution for as long as such contract remains in effect without modification.

(2) On and after the date determined by a postsecondary institution pursuant to section 48-3609, such postsecondary institution shall not enter into, modify, or renew any contract in a manner that conflicts with the Nebraska Fair Pay to Play Act.

**Source:** Laws 2020, LB962, § 7.  
Effective date November 14, 2020.

**48-3608 Civil action authorized; damages, procedure; limitation.**

(1) A student-athlete or a postsecondary institution aggrieved by a violation of the Nebraska Fair Pay to Play Act may bring a civil action against the postsecondary institution or collegiate athletic association committing such violation.

(2) A plaintiff who prevails in an action under the Nebraska Fair Pay to Play Act shall be entitled to:

- (a) Actual damages;
- (b) Such preliminary and other equitable or declaratory relief as may be appropriate; and
- (c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) A public postsecondary institution may be sued upon claims arising under the Nebraska Fair Pay to Play Act only to the extent allowed under the State Tort Claims Act, the State Contract Claims Act, or the State Miscellaneous Claims Act, except that a civil action for a violation of the Nebraska Fair Pay to Play Act may only be brought within one year after the cause of action has accrued.

**Source:** Laws 2020, LB962, § 8.  
Effective date November 14, 2020.

**Cross References**

**State Contract Claims Act**, see section 81-8,302.

**State Miscellaneous Claims Act**, see section 81-8,294.

**State Tort Claims Act**, see section 81-8,235.

**48-3609 Act, applicability.**

Each postsecondary institution shall determine a date on or before July 1, 2023, upon which the Nebraska Fair Pay to Play Act shall begin to apply to such postsecondary institution and the student-athletes who participate in an intercollegiate sport for such postsecondary institution and to any collegiate athletic association or professional representation in interactions with such postsecondary institution or student-athletes.

**Source:** Laws 2020, LB962, § 9.  
Effective date November 14, 2020.

## ARTICLE 37

NEBRASKA STATEWIDE WORKFORCE AND  
EDUCATION REPORTING SYSTEM ACT

## Section

48-3701. Act, how cited.

48-3702. Legislative findings.

48-3703. Nebraska Statewide Workforce and Education Reporting System.

48-3704. Memorandum of understanding; duties; report.

**48-3701 Act, how cited.**

Sections 48-3701 to 48-3704 shall be known and may be cited as the Nebraska Statewide Workforce and Education Reporting System Act.

**Source:** Laws 2020, LB1160, § 1.

Effective date August 11, 2020.

**48-3702 Legislative findings.**

The Legislature finds that:

(1) In order to promote strong economic development policies, good jobs, growing businesses, and thriving communities, it is the intent of the Legislature that the state support the continued planning and development of the Nebraska Statewide Workforce and Education Reporting System;

(2) As recommended in the 2019 Nebraska Economic Development Task Force Report, it is the long-term goal of the state to target resources and focus data analysis on assessing workforce development and employment success;

(3) The Nebraska Statewide Workforce and Education Reporting System is envisioned as a comprehensive, sustainable, and robust lifelong learning and workforce longitudinal data system serving the needs of the people of Nebraska;

(4) The Nebraska Statewide Workforce and Education Reporting System collaboration has its roots in Legislative Bill 1071 enacted by the One Hundred First Legislature, Second Session, which directed the Board of Regents of the University of Nebraska, the State Board of Education, the Board of Trustees of the Nebraska State Colleges, and the Community College Board of Governors for each community college area to adopt a policy to share student data. In 2019, such partners completed the legal formation of the Nebraska Statewide Workforce and Education Reporting System as a joint public entity under the Interlocal Cooperation Act in order to cooperate for mutual advantage with regard to data initiatives; and

(5) The Nebraska Statewide Workforce and Education Reporting System shall be a comprehensive, sustainable, and robust lifelong learning and workforce longitudinal data system to enable the training of tomorrow's workforce, today.

**Source:** Laws 2020, LB1160, § 2.

Effective date August 11, 2020.

## Cross References

**Interlocal Cooperation Act**, see section 13-801.

**48-3703 Nebraska Statewide Workforce and Education Reporting System.**



The Nebraska Statewide Workforce and Education Reporting System allows Nebraska to:

- (1) Provide workforce-outcomes data to postsecondary institutions to guide program, educator, and institutional improvement;
- (2) Support students and parents in understanding what education, training, and career pathways best prepare students for occupational success;
- (3) Provide comprehensive data about student success and workforce outcomes to policymakers to inform decisions and resource allocation;
- (4) Track workforce outcomes in order to better align programs with demands in the labor market;
- (5) Disaggregate student outcomes by race, ethnicity, gender, and economic status in order to identify and close educational attainment gaps; and
- (6) Identify the long-term return on investment from early education programs.

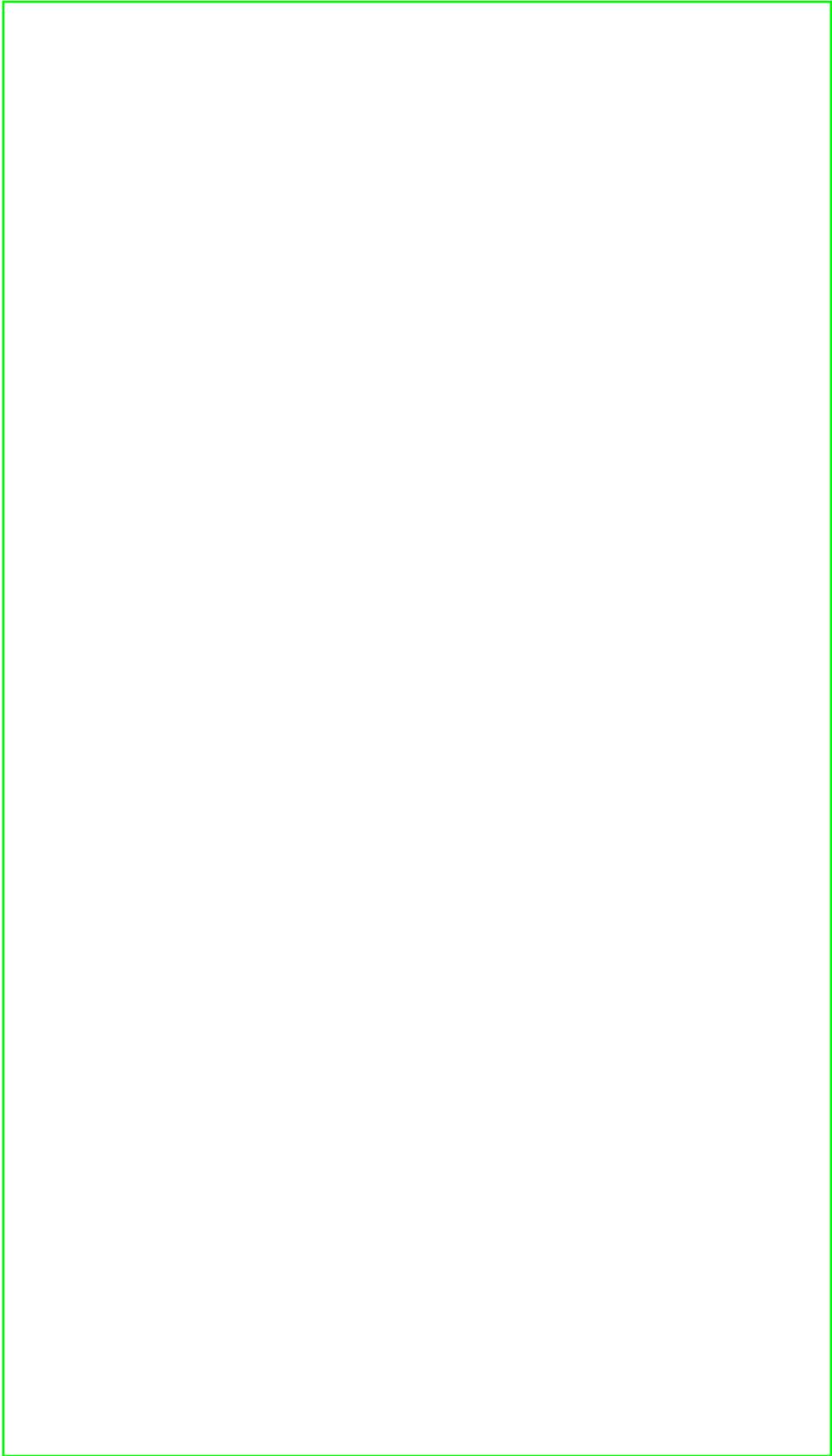
**Source:** Laws 2020, LB1160, § 3.  
Effective date August 11, 2020.

**48-3704 Memorandum of understanding; duties; report.**

(1) The Department of Labor shall execute a memorandum of understanding with the Nebraska Statewide Workforce and Education Reporting System before December 31, 2020, to ensure the exchange of available Department of Labor data throughout the prekindergarten to postsecondary education to workforce continuum, and may utilize data and agreements under sections 79-776, 85-110, 85-309, and 85-1511.

(2) The Nebraska Statewide Workforce and Education Reporting System shall issue a report electronically to the Clerk of the Legislature on or before December 1, 2021. Such report shall make recommendations on the planning and development of the Nebraska Statewide Workforce and Education Reporting System, including, but not limited to, additional data and stakeholder needs and potential future funding.

**Source:** Laws 2020, LB1160, § 4.  
Effective date August 11, 2020.



## CHAPTER 49

### LAW

Article.

2. Adoption of Constitutional Amendments. 49-233.
5. Publication and Distribution of Session Laws and Journals. 49-501.01, 49-506.
6. Printing and Distribution of Statutes. 49-617.
7. Statute Revision. 49-707 to 49-770.
8. Definitions, Construction, and Citation. 49-801.01.
9. Commission on Uniform State Laws. 49-904.
14. Nebraska Political Accountability and Disclosure Act.
  - (a) General Provisions. 49-1401 to 49-1433.01.
  - (b) Campaign Practices. 49-1445 to 49-1479.02.
  - (c) Lobbying Practices. 49-1483 to 49-1492.01.
  - (d) Conflicts of Interest. 49-1493 to 49-14,103.01.
  - (e) Nebraska Accountability and Disclosure Commission. 49-14,120 to 49-14,140.
  - (f) Digital and Electronic Filing. 49-14,141.
  - (g) Payment of Civil Penalties. 49-14,142.
15. Nebraska Short Form Act. Repealed.
17. Constitution of Nebraska. 49-1701.
18. Uniform Unsworn Foreign Declarations Act. 49-1801 to 49-1807.

#### ARTICLE 2

#### ADOPTION OF CONSTITUTIONAL AMENDMENTS

Section

- 49-233. Constitutional convention; preliminary survey committee; expenses.

**49-233 Constitutional convention; preliminary survey committee; expenses.**

The members of the preliminary survey committee shall be paid expenses while engaged in the duties provided for by section 49-232 as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1953, c. 173, § 22, p. 553; Laws 1981, LB 204, § 86; Laws 2020, LB381, § 40.

Operative date January 1, 2021.

#### ARTICLE 5

#### PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS

Section

- 49-501.01. Session laws and journal; Clerk of the Legislature; compile; contents.  
49-506. Distribution by Secretary of State.

**49-501.01 Session laws and journal; Clerk of the Legislature; compile; contents.**

The session laws and journal of the Legislature shall be compiled and published by the Clerk of the Legislature after each regular session of the Legislature. The session laws and journal may be published in print or electronic format or in both formats. The session laws shall contain all the laws passed

by the preceding session as well as those passed during any special session since the last regular session. The session laws shall also contain a certified copy of the Constitution of Nebraska as required by section 49-1701. The clerk shall distribute one copy of the session laws and journal to each person who was a member of the Legislature by which the laws were enacted and shall distribute a second copy to any such person upon his or her request. The clerk shall provide the session laws and journals to the Secretary of State for distribution pursuant to sections 49-501 to 49-509.01.

**Source:** Laws 1971, LB 36, § 1; Laws 2000, LB 534, § 1; Laws 2010, LB770, § 1; Laws 2016, LB686, § 2.

#### **49-506 Distribution by Secretary of State.**

After the Secretary of State has made the distribution provided by section 49-503, he or she shall deliver additional copies of the session laws and the journal of the Legislature pursuant to this section in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

One copy of the session laws shall be delivered to the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the State Fire Marshal, the Department of Administrative Services, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environment and Energy, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Transportation, the Department of Veterans' Affairs, the Department of Natural Resources, the Military Department, the Nebraska State Patrol, the Nebraska Commission on Law Enforcement and Criminal Justice, each of the Nebraska state colleges, the Game and Parks Commission, the Nebraska Library Commission, the Nebraska Liquor Control Commission, the Nebraska Accountability and Disclosure Commission, the Public Service Commission, the State Real Estate Commission, the Nebraska State Historical Society, the Public Employees Retirement Board, the Risk Manager, the Legislative Fiscal Analyst, the Public Counsel, the material division of the Department of Administrative Services, the State Records Administrator, the budget division of the Department of Administrative Services, the Tax Equalization and Review Commission, the inmate library at all state penal and correctional institutions, the Commission on Public Advocacy, and the Library of Congress; two copies to the Governor, the Secretary of State, the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, and the Coordinating Commission for Postsecondary Education, one of which shall be for use by the community colleges; three copies to the Department of Health and Human Services; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General; nine copies to the Revisor of Statutes; sixteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law.

One copy of the journal of the Legislature shall be delivered to the Governor, the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the Nebraska State Historical Society, the Legislative Fiscal Analyst, the Tax Equalization and Review Commission, the Commission on

Public Advocacy, and the Library of Congress; two copies to the Secretary of State, the Commission of Industrial Relations, and the Nebraska Workers' Compensation Court; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General and the Revisor of Statutes; eight copies to the Clerk of the Legislature; thirteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law. The remaining copies shall be delivered to the State Librarian who shall use the same, so far as required for exchange purposes, in building up the State Library and in the manner specified in sections 49-507 to 49-509.

**Source:** Laws 1907, c. 78, § 6, p. 290; R.S.1913, § 3738; C.S.1922, § 3131; C.S.1929, § 49-506; R.S.1943, § 49-506; Laws 1947, c. 185, § 4, p. 611; Laws 1961, c. 243, § 2, p. 725; Laws 1969, c. 413, § 1, p. 1419; Laws 1972, LB 1284, § 17; Laws 1987, LB 572, § 2; Laws 1991, LB 663, § 34; Laws 1991, LB 732, § 117; Laws 1993, LB 3, § 34; Laws 1995, LB 271, § 6; Laws 1996, LB 906, § 1; Laws 1996, LB 1044, § 277; Laws 1999, LB 36, § 3; Laws 2000, LB 534, § 3; Laws 2000, LB 900, § 240; Laws 2000, LB 1085, § 2; Laws 2007, LB296, § 222; Laws 2007, LB334, § 6; Laws 2017, LB339, § 176; Laws 2019, LB302, § 54.

## ARTICLE 6

### PRINTING AND DISTRIBUTION OF STATUTES

Section  
49-617. Printing of statutes; distribution of copies.

#### **49-617 Printing of statutes; distribution of copies.**

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; three copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of

Administrative Services, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

**Source:** Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 325, § 1, p. 863; Laws 1967, c. 326, § 1, p. 865; Laws 1971, LB 36, § 4; Laws 1972, LB 1032, § 254; Laws 1972, LB 1174, § 1; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 563, § 4; Laws 1973, LB 572, § 1; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3; Laws 2011, LB384, § 1; Laws 2017, LB339, § 177.

**ARTICLE 7**  
**STATUTE REVISION**

## Section

- 49-707. Copyright; distribution; price; disposition of proceeds; receipts.  
49-708. Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund;  
created; use; investment.  
49-770. Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.

**49-707 Copyright; distribution; price; disposition of proceeds; receipts.**

The Revisor of Statutes shall cause the supplements and reissued volumes to be copyrighted under the copyright laws of the United States for the benefit of the people of Nebraska.

The supplements and reissued or replacement volumes shall be sold and distributed by the Supreme Court at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall be sufficient to recover all costs of publication and distribution.

The Supreme Court may sell for one dollar per volume any compilation or revision of the statutes of Nebraska that has been superseded by a later official revision, compilation, or replacement volume. The Supreme Court may dispose of any unsold superseded volumes in any manner it deems proper.

All money received by the Supreme Court from the sale of the supplements and reissued or replacement volumes shall be paid into the state treasury to the credit of the Nebraska Statutes Cash Fund or the Nebraska Statutes Distribution Cash Fund, as appropriate. That portion of the money received that represents the costs of publication shall be credited to the Nebraska Statutes Cash Fund, and that portion of the money received that represents the costs of distribution shall be credited to the Nebraska Statutes Distribution Cash Fund. The court shall take receipts for all such money paid into the funds.

Supplements and reissued volumes shall be furnished and delivered free of charge in the same number and to the same parties as are designated in section 49-617.

**Source:** Laws 1945, c. 119, § 7, p. 394; Laws 1965, c. 306, § 5, p. 862; Laws 1965, c. 305, § 2, p. 860; Laws 1977, LB 8, § 3; Laws 1980, LB 598, § 3; Laws 1986, LB 991, § 1; Laws 1987, LB 572, § 7; Laws 2012, LB576, § 1.

**49-708 Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.**

The Nebraska Statutes Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Revisor of Statutes to perform the duties required by subdivision (4) of section 49-702 and section 49-704, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Statutes Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The Nebraska Statutes Distribution Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Supreme Court to perform the duties required by such section. 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, LB576, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**49-770 Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.**

When one section of the statutes is amended in two or more bills in the same session of the Legislature and has not been correlated as a part of the normal legislative process and the amendments are not entirely reconcilable and are in conflict with each other, it shall be the duty of the Revisor of Statutes to cause only the latest version to pass the Legislature to be published in the statutory supplement followed by a brief note explaining the action taken. The Revisor of Statutes shall report electronically each such case to the chairperson of the appropriate standing committee at or prior to the convening of the next regular session of the Legislature for whatever action may be appropriate.

**Source:** Laws 1979, LB 70, § 2; Laws 2012, LB782, § 68.

**ARTICLE 8**

**DEFINITIONS, CONSTRUCTION, AND CITATION**

**Section**

49-801.01. Internal Revenue Code; reference.

**49-801.01 Internal Revenue Code; reference.**

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, 77-6306, 77-6509, 77-6513, 77-6519, 77-6811, 77-6815, 77-6819, 77-6821, 77-6822, 77-6831, 77-6834, and 77-6842, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on April 12, 2018.

**Source:** Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11; Laws 2012, LB725, § 1; Laws 2012, LB1128, § 20; Laws 2013, LB24, § 1; Laws 2014, LB191, § 13; Laws 2014, LB739, § 1; Laws 2015, LB171, § 1; Laws 2017, LB234, § 1; Laws 2018, LB1091, § 1; Laws 2020, LB1107, § 118.

Operative date January 1, 2021.



**ARTICLE 9**  
**COMMISSION ON UNIFORM STATE LAWS**

Section  
49-904. Members; duties.

**49-904 Members; duties.**

Each commissioner shall attend the meeting of the National Conference of Commissioners on Uniform State Laws, and both in and out of such national conference shall do all in his or her power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable. The commission shall report electronically to the Clerk of the Legislature from time to time as the commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the commission. It shall also be the duty of the commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

**Source:** Laws 1951, c. 166, § 4, p. 650; Laws 1979, LB 322, § 20; Laws 1981, LB 545, § 12; Laws 2012, LB782, § 69.

**ARTICLE 14**  
**NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT**

(a) GENERAL PROVISIONS

Section  
49-1401. Act, how cited.  
49-1413. Committee, defined.  
49-1415. Contribution, defined.  
49-1433.01. Major out-of-state contributor, defined.

(b) CAMPAIGN PRACTICES

49-1445. Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.  
49-1446. Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.  
49-1446.04. Candidate committee; loans; restrictions; civil penalty.  
49-1447. Committee treasurer; statements or reports; duties; committee records; violation; penalty.  
49-1455. Committee campaign statement; contents.  
49-1456. Committee account; income; how treated; loans.  
49-1457. Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.  
49-1459. Campaign statements; filing schedule; statement of exemption.  
49-1461.01. Ballot question committee; surety bond; requirements; violations; penalty.  
49-1463. Campaign statement; statement of exemption; violations; late filing fee.  
49-1463.01. Late filing fee; relief; reduction or waiver; when.  
49-1464. Campaign statements of committees; where filed.  
49-1467. Person; independent expenditure report; when filed; contents; late filing fee; violation; penalty.  
49-1469. Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.  
49-1469.05. Businesses and organizations; separate segregated political fund; restrictions.  
49-1469.06. Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.

§ 49-1401

LAW

Section

- 49-1469.07. Businesses and organizations; separate segregated political fund; status.
- 49-1469.08. Businesses and organizations; late filing fee; violation; penalty.
- 49-1477. Contributions from persons other than committee; information required; violation; penalty.
- 49-1479.02. Major out-of-state contributor; report; contents; applicability; late filing fee.

(c) LOBBYING PRACTICES

- 49-1483. Lobbyist and principal; file separate statements; when; contents.
- 49-1483.03. Lobbyist or principal; special report required; when; late filing fee.
- 49-1488. Registered lobbyist; statement of activity during regular or special session; when filed.
- 49-1488.01. Statements; late filing fee; reduction or waiver; when.
- 49-1492.01. Agency, political subdivision, or publicly funded postsecondary educational institution; gifts; reporting requirements; violations; penalty.

(d) CONFLICTS OF INTEREST

- 49-1493. Individuals required to file a statement of financial interests.
- 49-1494. Candidates for elective office; statement of financial interest; filing; time; supplementary statements; failure to file; effect.
- 49-1497. Financial institution, defined; irrevocable trust; how treated.
- 49-1499.02. Executive branch; discharge of official duties; potential conflict; actions required.
- 49-1499.03. Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.
- 49-14,101.03. Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.
- 49-14,102. Contracts with government bodies; procedure; powers of certain cities; purpose.
- 49-14,103.01. Officer, defined; interest in contract prohibited; when.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

- 49-14,120. Commission; members; expenses.
- 49-14,122. Commission; field investigations and audits; purpose.
- 49-14,123. Commission; duties.
- 49-14,124. Alleged violation; preliminary investigation by commission; powers; notice.
- 49-14,124.01. Preliminary investigation; confidential; exception.
- 49-14,124.02. Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.
- 49-14,125. Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.
- 49-14,126. Commission; violation; orders; civil penalty; costs of hearing.
- 49-14,129. Commission; suspend or modify reporting requirements; conditions.
- 49-14,132. Filings; limitation of use.
- 49-14,133. Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.
- 49-14,140. Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

(f) DIGITAL AND ELECTRONIC FILING

- 49-14,141. Electronic filing system; campaign statements and reports; availability; procedures for filings.

(g) PAYMENT OF CIVIL PENALTIES

- 49-14,142. Payment of civil penalty.

(a) GENERAL PROVISIONS

**49-1401 Act, how cited.**

Sections 49-1401 to 49-14,142 shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1976, LB 987, § 1; Laws 1981, LB 134, § 1; Laws 1986, LB 548, § 11; Laws 1987, LB 480, § 1; Laws 1989, LB 815, § 1; Laws 1991, LB 232, § 1; Laws 1994, LB 872, § 1; Laws 1994, LB 1243, § 2; Laws 1995, LB 28, § 3; Laws 1995, LB 399, § 1; Laws 1997, LB 49, § 1; Laws 1997, LB 420, § 15; Laws 1999, LB 581, § 1; Laws 2000, LB 438, § 1; Laws 2000, LB 1021, § 1; Laws 2001, LB 242, § 1; Laws 2002, LB 1003, § 34; Laws 2005, LB 242, § 2; Laws 2007, LB464, § 2; Laws 2007, LB527, § 1; Laws 2009, LB322, § 1; Laws 2009, LB626, § 1; Laws 2017, LB85, § 3.

**49-1413 Committee, defined.**

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and Disclosure Act upon raising, receiving, or spending more than five thousand dollars in a calendar year as prescribed in this section.

(3) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

**Source:** Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4; Laws 2013, LB79, § 2; Laws 2014, LB946, § 21.

**49-1415 Contribution, defined.**

(1) Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and

the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution shall not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid;

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or

(c) Food and beverages, in the amount of not more than fifty dollars in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

**Source:** Laws 1976, LB 987, § 15; Laws 2013, LB79, § 3; Laws 2014, LB946, § 22.

**49-1433.01 Major out-of-state contributor, defined.**

Major out-of-state contributor means a corporation, union, industry association, trade association, or professional association which is not organized under the laws of the State of Nebraska and which makes contributions or expenditures totaling more than ten thousand dollars in any calendar year in connection with one or more elections.

**Source:** Laws 1997, LB 49, § 6; Laws 2013, LB79, § 4; Laws 2014, LB946, § 23.

(b) CAMPAIGN PRACTICES

**49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.**

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

(6) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7; Laws 2013, LB79, § 5; Laws 2014, LB946, § 24.

**49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.**

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8; Laws 2013, LB79, § 6.

**49-1446.04 Candidate committee; loans; restrictions; civil penalty.**

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans in an aggregate amount of more than fifty percent of the

contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13; Laws 2013, LB79, § 7.

**49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.**

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13; Laws 2013, LB79, § 8.

**49-1455 Committee campaign statement; contents.**

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means the calendar year of the election.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

**Source:** Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6; Laws 2013, LB79, § 9; Laws 2014, LB946, § 25.

**49-1456 Committee account; income; how treated; loans.**

(1) Any income received by a committee on an account consisting of funds or property belonging to the committee shall not be considered a contribution to the committee but shall be reported as income. Any interest paid by a committee shall be reported as an expenditure.

(2) A loan made or received shall be set forth in a separate schedule providing the date and amount of the loan and, if the loan is repaid, the date and manner of repayment. The committee shall provide the name and address of the lender and any person who is liable directly, indirectly, or contingently on each loan of more than two hundred fifty dollars.

**Source:** Laws 1976, LB 987, § 56; Laws 1981, LB 134, § 3; Laws 1999, LB 416, § 8; Laws 2013, LB79, § 10; Laws 2014, LB946, § 26.

**49-1457 Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.**

(1) The campaign statement filed by a political party committee shall contain the following information:

(a) The full name and street address of each person from whom contributions totaling more than two hundred fifty dollars in value are received in a calendar year, the amount, and the date or dates contributed; and if the person is a committee, the name and address of the committee and the full name and street address of the committee treasurer, together with the amount of the contribution and the date received;

(b) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent expenditures in support of the qualification, passage, or defeat of a ballot question, or in support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents;

(c) The total expenditure by the committee for each candidate for elective office or ballot question in whose behalf an independent expenditure was made or a contribution was given for the election; and

(d) The filer's name, address, and telephone number, if any, and the full name, residential and business addresses, and telephone numbers of the committee treasurer.

(2) A contribution to a candidate or ballot question committee listed under subdivision (1)(b) of this section shall note the name and address of the committee, the name of the candidate and the office sought, if any, the amount contributed, and the date of the contribution.



(3) An independent expenditure listed under subdivision (1)(b) of this section shall note the name of the candidate for whose benefit the expenditure was made and the office sought by the candidate, or a brief description of the ballot question for which the expenditure was made, the amount, date, and purpose of the expenditure, and the full name and address of the person to whom the expenditure was made.

(4) An expenditure listed which was made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.

**Source:** Laws 1976, LB 987, § 57; Laws 1999, LB 416, § 9; Laws 2013, LB79, § 11; Laws 2014, LB946, § 27.

**49-1459 Campaign statements; filing schedule; statement of exemption.**

(1) Except as provided in subsection (2) of this section, campaign statements as required by the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(a) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(b) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(c) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the seventieth day following the general election. The closing date for a postelection campaign statement to be filed under this subdivision after the primary election shall be the thirty-fifth day following the election. The closing date for a postelection campaign statement to be filed under this subdivision after the general election shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the dates provided under this subdivision.

(2) Any committee may file a statement with the commission indicating that the committee does not expect to receive contributions or make expenditures of more than one thousand dollars in the calendar year of an election. Such statement shall be signed by the committee treasurer or the assistant treasurer, and in the case of a candidate committee, it shall also be signed by the candidate. Such statement shall be filed on or before the thirtieth day before the election. A committee which files a statement pursuant to this subsection is not required to file campaign statements according to the schedule prescribed in subsection (1) of this section but shall file a sworn statement of exemption not later than the fortieth day following the primary election and the seventieth day following the general election stating only that the committee did not, in fact, receive or expend an amount in excess of one thousand dollars. If the committee receives contributions or makes expenditures of more than one thousand dollars during the election year, the committee is then subject to all campaign filing requirements under subsection (1) of this section.

**Source:** Laws 1976, LB 987, § 59; Laws 1980, LB 535, § 10; Laws 1993, LB 587, § 14; Laws 1998, LB 632, § 3; Laws 1999, LB 416, § 11; Laws 2013, LB79, § 12.

**49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.**

(1) A ballot question committee shall file 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 all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures of more than one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16; Laws 2013, LB79, § 13; Laws 2014, LB946, § 28.

**49-1463 Campaign statement; statement of exemption; violations; late filing fee.**

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

**Source:** Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14; Laws 2013, LB79, § 14.

**49-1463.01 Late filing fee; relief; reduction or waiver; when.**

(1) A person required to pay a late filing fee imposed under section 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commission by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

**Source:** Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7; Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15; Laws 2013, LB79, § 15; Laws 2014, LB946, § 29.

**49-1464 Campaign statements of committees; where filed.**

The campaign statement of any committee, including a candidate committee, a ballot question committee, or a political party committee, shall be filed with the commission.

**Source:** Laws 1976, LB 987, § 64; Laws 1980, LB 535, § 14; Laws 1993, LB 587, § 16; Laws 2001, LB 242, § 5; Laws 2013, LB79, § 16.

**49-1467 Person; independent expenditure report; when filed; contents; late filing fee; violation; penalty.**

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18; Laws 2013, LB79, § 17; Laws 2014, LB946, § 30.

**49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.**

(1) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

- (a) Make an expenditure;
- (b) Make a contribution; and
- (c) Provide personal services.

(2) Any such entity shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) Any entity specified in subsection (1) of this section may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

**Source:** Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19; Laws 2013, LB79, § 18; Laws 2014, LB946, § 31.

**49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.**

(1) An entity specified in subsection (1) of section 49-1469 which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association, limited liability company, or limited liability partnership of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

**Source:** Laws 2005, LB 242, § 20; Laws 2013, LB79, § 19.

**49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.**

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stock-

holders, or members of the corporation, including a nonprofit corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by an entity specified in subsection (1) of section 49-1469. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the entity which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of any such entity may be paid from the separate segregated political fund of such entity.

**Source:** Laws 2005, LB 242, § 21; Laws 2013, LB79, § 20.

**49-1469.07 Businesses and organizations; separate segregated political fund; status.**

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the entity which establishes and administers such fund shall make the reports and filings required therefor.

**Source:** Laws 2005, LB 242, § 22; Laws 2013, LB79, § 21.

**49-1469.08 Businesses and organizations; late filing fee; violation; penalty.**

(1) Any entity specified in subsection (1) of section 49-1469 which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections, not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 242, § 23; Laws 2013, LB79, § 22.

**49-1477 Contributions from persons other than committee; information required; violation; penalty.**

No person shall receive a contribution from a person other than a committee unless, for purposes of the recipient person's record-keeping and reporting requirements, the contribution is accompanied by the name and address of each person who contributed more than one hundred dollars to the contribu-

tion. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 77; Laws 1977, LB 41, § 50; Laws 2013, LB79, § 23; Laws 2014, LB946, § 32.

**49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.**

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

**Source:** Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3; Laws 2013, LB79, § 24; Laws 2014, LB946, § 33.

(c) LOBBYING PRACTICES

**49-1483 Lobbyist and principal; file separate statements; when; contents.**

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivision (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts electronically to the Clerk of

the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts electronically to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report electronically the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter means the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

**Source:** Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33; Laws 2012, LB782, § 70.

**49-1483.03 Lobbyist or principal; special report required; when; late filing fee.**

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file electronically a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

**Source:** Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4; Laws 2012, LB782, § 71.

**49-1488 Registered lobbyist; statement of activity during regular or special session; when filed.**



Within forty-five days after the completion of every regular or special session of the Legislature, each registered lobbyist shall submit electronically to the Clerk of the Legislature a statement listing the legislation upon which the lobbyist acted, including identification by number of any bill or resolution and the position taken by the lobbyist.

**Source:** Laws 1976, LB 987, § 88; Laws 1991, LB 232, § 5; Laws 1994, LB 872, § 10; Laws 1994, LB 1243, § 11; Laws 2012, LB782, § 72.

**49-1488.01 Statements; late filing fee; reduction or waiver; when.**

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections, but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the person shall not be required to make a showing as provided by subsection (2) of this section.

**Source:** Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35; Laws 2013, LB79, § 25; Laws 2014, LB946, § 34.

**49-1492.01 Agency, political subdivision, or publicly funded postsecondary educational institution; gifts; reporting requirements; violations; penalty.**

(1) Any agency, political subdivision, or publicly funded postsecondary educational institution which gives a gift of an admission to a state-owned facility or a state-sponsored industry or event to a public official, a member of a public official's staff, or a member of the immediate family of a public official shall report the gift on a form prescribed by the commission.

(2) The report shall be filed electronically with the Clerk of the Legislature within fifteen days after the end of the calendar quarter in which the gift is given. The report shall include the following:

(a) The identity of the agency, political subdivision, or publicly funded postsecondary educational institution;

(b) A description of the gift;

(c) The value of the gift; and

(d) The name of the recipient of the gift and the following:

(i) If the recipient is an official in the executive or legislative branch of state government, the office held by the official and the branch he or she serves;

(ii) If the recipient is a member of an official's staff in the executive or legislative branch of state government, his or her job title and the name of the official; or

(iii) If the recipient is a member of the immediate family of an official in the executive or legislative branch of state government, his or her relationship to the official and the name of the official.

(3) For purposes of this section, public official does not include an elected or appointed official of a political subdivision or school board.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 1021, § 7; Laws 2012, LB782, § 73.

#### (d) CONFLICTS OF INTEREST

##### **49-1493 Individuals required to file a statement of financial interests.**

The individuals listed in subdivisions (1) through (13) of this section shall file with the commission a statement of financial interests as provided in sections 49-1496 and 49-1497 for the preceding calendar year on or before March 1 of each year in which such individual holds such a position. An individual who leaves office shall, within thirty days after leaving office, file a statement covering the period since the previous statement was filed. Disclosure of the interest named in sections 49-1496 to 49-1498 shall be made by:

(1) An individual holding a state executive office as provided in Article IV of the Constitution of Nebraska, including the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, Tax Commissioner, and heads of such other executive departments as set forth in the Constitution or as may be established by law;

(2) An individual holding the office of Commissioner of Education, member of the State Board of Education, member of the Board of Regents of the University of Nebraska with the exception of student members, or member of the Coordinating Commission for Postsecondary Education;

(3) A member of the Board of Parole;

(4) A member of the Public Service Commission;

(5) A member of the Legislature;

(6) A member of the board of directors or an officer of a district organized under the provisions of Chapter 70;

(7) A member of any board or commission of the state or any county which examines or licenses a business or which determines rates for or otherwise regulates a business;

(8) A member of a land-use planning commission, zoning commission, or authority of the state or any county with a population of more than one hundred thousand inhabitants;

(9) An elected official of a city of the primary or metropolitan class;

(10) An elected county official;

(11) A member of the Nebraska Environmental Trust Board;

(12) An individual employed at the University of Nebraska-Lincoln in the position of Head Football Coach, Men's Basketball Coach, or Women's Basketball Coach; and

(13) An official or employee of the state designated by rules and regulations of the commission who is responsible for taking or recommending official action of a nonministerial nature with regard to:

(a) Contracting or procurement;

(b) Administering or monitoring grants or subsidies;

(c) Land-use planning or zoning;

(d) Inspecting, licensing, regulating, or auditing any person; or

(e) Any similar action.

**Source:** Laws 1976, LB 987, § 93; Laws 1983, LB 214, § 2; Laws 1991, LB 663, § 35; Laws 1999, LB 417, § 1; Laws 2001, LB 242, § 9; Laws 2002, LB 1003, § 35; Laws 2016, LB400, § 1.

**49-1494 Candidates for elective office; statement of financial interest; filing; time; supplementary statements; failure to file; effect.**

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall file a statement of financial interests for the preceding calendar year with the commission as provided in this section.

(2) Candidates for the elective offices specified in section 49-1493 who qualify other than by filing shall file a statement for the preceding calendar year with the commission within five days after becoming a candidate or being appointed to that elective office.

(3) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall file supplementary statements, covering the preceding calendar year, with the commission on or before March 1 of the year in which the election is held or, if the filing deadline for the elective office is after March 1 of the year in which the election is held, the candidate shall file such supplementary statements on or before the filing deadline for the elective office.

(4) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election during the calendar year in which the election is held, the candidate shall file a statement of financial interests for the preceding calendar year with the commission on or before March 1 of the year in which the election is held or, if the filing deadline for the elective office is after March 1 of the year in which the election is held, the candidate shall file such statement on or before the filing deadline for the elective office.

(5) A candidate for an elective office specified in section 49-1493 who fails to file a statement of financial interests as required in subsection (1) or (2) of this section within five days after the deadline in subsection (3) or (4) of this section and section 49-1493 shall not appear on the ballot.

(6) A statement of financial interests shall be preserved for a period of not less than five years by the commission.

**Source:** Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36; Laws 2016, LB400, § 2; Laws 2017, LB451, § 15.

**49-1497 Financial institution, defined; irrevocable trust; how treated.**

(1) For purposes of section 49-1496, financial institution means:

- (a) A bank or banking corporation as defined in section 8-101.03;
- (b) A federal bank or branch bank;
- (c) An insurance company providing a loan on an insurance policy;
- (d) A small loan company;
- (e) A state or federal savings and loan association or credit union; or
- (f) The federal government or any political subdivision thereof.

(2) The res or the income of an irrevocable trust of a member of the individual's immediate family is not required to be reported pursuant to section 49-1496.

**Source:** Laws 1976, LB 987, § 97; Laws 2005, LB 242, § 38; Laws 2017, LB140, § 158.

**49-1499.02 Executive branch; discharge of official duties; potential conflict; actions required.**

(1) An official or employee of the executive branch of state government who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(2) This section does not prevent such a person from (a) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

(3) For purposes of this section, commodity board means only the following:

- (a) Corn Development, Utilization, and Marketing Board;
- (b) Nebraska Dairy Industry Development Board;
- (c) Grain Sorghum Development, Utilization, and Marketing Board;
- (d) Nebraska Wheat Development, Utilization, and Marketing Board;
- (e) Dry Bean Commission;
- (f) Nebraska Potato Development Committee;
- (g) Nebraska Poultry and Egg Development, Utilization, and Marketing Committee; and
- (h) Dry Pea and Lentil Commission.

**Source:** Laws 2001, LB 242, § 13; Laws 2005, LB 242, § 41; Laws 2020, LB803, § 21.  
Effective date November 14, 2020.

**49-1499.03 Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.**

(1)(a) An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the commission and to the person in charge of keeping records for the political subdivision who shall enter the statement onto the public records of the subdivision.

(b) The official shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(c) This subsection does not prevent such a person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made. A person acting pursuant to this subdivision shall report the occurrence to the commission.

(2)(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Except as otherwise provided in subsection (3) of this section, abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(3)(a) This section does not prevent a person holding an elective office of any city, village, or school district from making or participating in the making of a governmental decision:

(i) To the extent that the individual's participation is legally required for the action or decision to be made; or

(ii) If the potential conflict of interest is based on a business association and (A) such business association is an association of cities and villages or school districts, (B) the city, village, or school district is a member of such association, and (C) the business association exists only as the result of such person holding elective office.

(b) A person holding elective office of any city subject to subsection (1) of this section who is acting pursuant to this subsection shall report the occurrence as provided in subdivisions (1)(a)(i) and (ii) of this section.

(c) A person subject to subsection (2) of this section who is acting pursuant to this subsection shall report the occurrence as provided in subdivisions (2)(a)(i) and (ii) of this section.

(4) Matters involving an interest in a contract are governed either by sections 49-14,102 and 49-14,103 or by sections 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an immediate family member are governed by section 49-1499.04. Matters involving nepotism or the supervision of a family member by an official or employee in the executive branch of state government are governed by section 49-1499.07.

**Source:** Laws 2001, LB 242, § 14; Laws 2005, LB 242, § 42; Laws 2009, LB322, § 3; Laws 2019, LB411, § 66.

**49-14,101.03 Public official or public employee; incidental or de minimis use of public resources; permissible activities and uses.**

(1) Any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of section 49-14,101.01 or 49-14,101.02.

(2) For purposes of sections 49-14,101.01 and 49-14,101.02, a resource of government, including a vehicle, shall not be considered a public resource and personal use shall not be prohibited if (a) the use of the resource for personal purposes is part of the public official's or public employee's compensation provided in an employment contract or a written policy approved by a government body and (b) the personal use of the resource as compensation is reported in accordance with the Internal Revenue Code of 1986, as amended, and taxes, if any, are paid. If authorized by the contract or policy, the resource may be

used whether or not the public official or public employee is engaged in the duties of his or her public office or public employment.

(3) Use of a government vehicle by a public official or public employee to travel to a designated location or the home of the public official or public employee is permissible when the primary purpose of the travel serves a government purpose and the use is pursuant to a written policy approved by a government body.

(4) Use of a government Internet network by a member of the Legislature for essential personal business is permissible when the member is serving in the member's official capacity and such use is pursuant to a written policy approved by the Executive Board of the Legislative Council.

(5) Pursuant to a collective-bargaining agreement, a public facility may be used by a bargaining unit to meet regarding activities of the union or bargaining unit. This section shall not authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(6) Nothing in the Nebraska Political Accountability and Disclosure Act prohibits a public official or public employee from using his or her personal cellular telephone, electronic handheld device, or computer to access a wireless network to which access is provided to the public by a government body.

**Source:** Laws 2009, LB626, § 3; Laws 2020, LB996, § 1.  
Operative date July 25, 2020.

**49-14,102 Contracts with government bodies; procedure; powers of certain cities; purpose.**

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) Notwithstanding any other provision of this section, any city of the metropolitan, primary, or first class may prohibit contracts over a specific dollar amount in which a public official or a public employee of such city may have an interest.

(6) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

(7) This section does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

**Source:** Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46; Laws 2014, LB364, § 1.

**49-14,103.01 Officer, defined; interest in contract prohibited; when.**

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means (a) a member of the board of directors of a natural resources district, (b) a member of the board of directors of a district organized under Chapter 70, (c) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (d) any elected county, school district, educational service unit, city, or village official, and (e) a member of any board of directors or trustees of a hospital district as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519. Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict.

(3) An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.



(6) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(7) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(8) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(9) Section 49-14,102 does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(10)(a) This section does not prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three credentialed real property appraisers or by a court of competent jurisdiction in an eminent domain proceeding.

(b) District payments to a director of a natural resources district of the market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

**Source:** Laws 1986, LB 548, § 2; Laws 1987, LB 134, § 8; Laws 1987, LB 688, § 10; Laws 1990, LB 1153, § 55; Laws 1991, LB 203, § 2; Laws 1994, LB 1107, § 2; Laws 2001, LB 242, § 21; Laws 2005, LB 242, § 48; Laws 2006, LB 778, § 5; Laws 2020, LB1055, § 19.

Effective date November 14, 2020.

**Cross References**

Nebraska Local Hospital District Act, see section 23-3528.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

**49-14,120 Commission; members; expenses.**

All members of the commission shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55; Laws 2011, LB292, § 1; Laws 2020, LB381, § 41.  
Operative date January 1, 2021.

**49-14,122 Commission; field investigations and audits; purpose.**

The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission

under the Nebraska Political Accountability and Disclosure Act. Any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under the act if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of the act.

**Source:** Laws 1976, LB 987, § 122; Laws 1993, LB 587, § 18; Laws 2013, LB79, § 26.

**49-14,123 Commission; duties.**

In addition to any other duties prescribed by law, the commission shall:

(1) Adopt and promulgate rules and regulations to carry out the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the act and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the act;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the act;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the act upon the request of a person or government body directly covered or affected by the act. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations adopted and promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act and remit all such funds to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund;

(13) Provide current information or a list of persons owing civil penalties and interest to filing officers to determine compliance with subsection (4) of section 32-602. The commission shall provide the current information or list to each filing officer on December 1 prior to a statewide primary election, shall continuously update the information or list through March 1 prior to the statewide primary election, and shall update such information or list at other times upon request of a filing officer; and

(14) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

**Source:** Laws 1976, LB 987, § 123; Laws 1981, LB 134, § 9; Laws 1981, LB 545, § 13; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3; Laws 2013, LB79, § 27; Laws 2017, LB85, § 5.

**Cross References**

Administrative Procedure Act, see section 84-920.

**49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.**

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) For purposes of conducting preliminary investigations under the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(3) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(4) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(5) Each governing body shall cooperate with the commission in the conduct of its investigations.

**Source:** Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16; Laws 2013, LB79, § 28.

**49-14,124.01 Preliminary investigation; confidential; exception.**

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act requests that the proceedings be public. If the commission determines that there was no violation of the act or any rule or regulation adopted and promulgated under the act, the records and actions relative to the investigation and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

**Source:** Laws 2005, LB 242, § 58; Laws 2013, LB79, § 29.

**49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.**

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

**Source:** Laws 2007, LB464, § 4; Laws 2013, LB79, § 30.

**49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.**

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or any rule or regulation adopted and promulgated thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska Political Accountability and Disclosure Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of the act or

any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17; Laws 2013, LB79, § 31.

**49-14,126 Commission; violation; orders; civil penalty; costs of hearing.**

The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (1) Cease and desist from the violation;
- (2) File any report, statement, or other information as required;
- (3) Pay a civil penalty of not more than five thousand dollars for each violation of the act, rule, or regulation; or
- (4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

**Source:** Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1; Laws 2013, LB79, § 32; Laws 2019, LB411, § 67.

**49-14,129 Commission; suspend or modify reporting requirements; conditions.**

The commission, by order, may suspend or modify any of the reporting requirements of the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of the act works a manifestly unreasonable hardship and if it also finds that such

suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

**Source:** Laws 1976, LB 987, § 129; Laws 1980, LB 535, § 19; Laws 1993, LB 587, § 19; Laws 2013, LB79, § 33.

**49-14,132 Filings; limitation of use.**

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee or entity specified in subsection (1) of section 49-1469 may be used for soliciting contributions from such committee or entity and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

**Source:** Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61; Laws 2013, LB79, § 34.

**49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.**

The Attorney General has jurisdiction to enforce the criminal provisions of the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the act occurs shall have concurrent jurisdiction.

**Source:** Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6; Laws 2013, LB79, § 35.

**49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.**

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-14,123, and 49-14,123.01 and subdivision (4) of section 49-14,126. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

On April 25, 2013, the State Treasurer shall transfer \$630,870 from the Campaign Finance Limitation Cash Fund to the Nebraska Accountability and Disclosure Commission Cash Fund to be used for development, implementation, and maintenance of an electronic filing system for campaign statements and other reports under the Nebraska Political Accountability and Disclosure

Act and for making such statements and reports available to the public on the web site of the commission. The State Treasurer shall transfer the balance of the Campaign Finance Limitation Cash Fund to the Election Administration Fund on or before July 5, 2013, or as soon thereafter as administratively possible.

**Source:** Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25; Laws 2011, LB176, § 2; Laws 2013, LB79, § 36; Laws 2018, LB945, § 12.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### (f) DIGITAL AND ELECTRONIC FILING

#### **49-14,141 Electronic filing system; campaign statements and reports; availability; procedures for filings.**

(1) The commission shall develop, implement, and maintain an electronic filing system for campaign statements and other reports required to be filed with the commission under the Nebraska Political Accountability and Disclosure Act and shall provide for such statements and reports to be made available to the public on its web site as soon as practicable.

(2) The commission may adopt procedures for the digital and electronic filing of any report or statement with the commission as required by the act. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for statements or reports filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any report, statement, or verification statement.

**Source:** Laws 1999, LB 581, § 3; Laws 2002, LB 1105, § 438; Laws 2013, LB79, § 37.

### (g) PAYMENT OF CIVIL PENALTIES

#### **49-14,142 Payment of civil penalty.**

No person shall be appointed to any elective or appointive office specified in section 49-1493 until he or she has first paid any outstanding civil penalties and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 2017, LB85, § 4.

## ARTICLE 15

### NEBRASKA SHORT FORM ACT

#### Section

- 49-1501. Repealed. Laws 2012, LB 1113, § 50.
- 49-1502. Repealed. Laws 2012, LB 1113, § 50.
- 49-1503. Repealed. Laws 2012, LB 1113, § 50.
- 49-1504. Repealed. Laws 2012, LB 1113, § 50.
- 49-1505. Repealed. Laws 2012, LB 1113, § 50.
- 49-1506. Repealed. Laws 2012, LB 1113, § 50.





49-1503 Repealed. Laws 2012, LB 1113, § 50.  
49-1504 Repealed. Laws 2012, LB 1113, § 50.  
49-1505 Repealed. Laws 2012, LB 1113, § 50.  
49-1506 Repealed. Laws 2012, LB 1113, § 50.  
49-1507 Repealed. Laws 2012, LB 1113, § 50.  
49-1508 Repealed. Laws 2012, LB 1113, § 50.  
49-1509 Repealed. Laws 2012, LB 1113, § 50.  
49-1510 Repealed. Laws 2012, LB 1113, § 50.  
49-1511 Repealed. Laws 2012, LB 1113, § 50.  
49-1512 Repealed. Laws 2012, LB 1113, § 50.  
49-1513 Repealed. Laws 2012, LB 1113, § 50.  
49-1514 Repealed. Laws 2012, LB 1113, § 50.  
49-1515 Repealed. Laws 2012, LB 1113, § 50.  
49-1516 Repealed. Laws 2012, LB 1113, § 50.  
49-1517 Repealed. Laws 2012, LB 1113, § 50.  
49-1518 Repealed. Laws 2012, LB 1113, § 50.  
49-1519 Repealed. Laws 2012, LB 1113, § 50.  
49-1520 Repealed. Laws 2012, LB 1113, § 50.  
49-1521 Repealed. Laws 2012, LB 1113, § 50.  
49-1522 Repealed. Laws 2012, LB 1113, § 50.  
49-1523 Repealed. Laws 2012, LB 1113, § 50.  
49-1524 Repealed. Laws 2012, LB 1113, § 50.  
49-1525 Repealed. Laws 2012, LB 1113, § 50.  
49-1526 Repealed. Laws 2012, LB 1113, § 50.  
49-1527 Repealed. Laws 2012, LB 1113, § 50.  
49-1528 Repealed. Laws 2012, LB 1113, § 50.  
49-1529 Repealed. Laws 2012, LB 1113, § 50.  
49-1530 Repealed. Laws 2012, LB 1113, § 50.  
49-1531 Repealed. Laws 2012, LB 1113, § 50.  
49-1532 Repealed. Laws 2012, LB 1113, § 50.  
49-1533 Repealed. Laws 2012, LB 1113, § 50.

- 49-1534 Repealed. Laws 2012, LB 1113, § 50.
- 49-1535 Repealed. Laws 2012, LB 1113, § 50.
- 49-1536 Repealed. Laws 2012, LB 1113, § 50.
- 49-1537 Repealed. Laws 2012, LB 1113, § 50.
- 49-1538 Repealed. Laws 2012, LB 1113, § 50.
- 49-1539 Repealed. Laws 2012, LB 1113, § 50.
- 49-1540 Repealed. Laws 2012, LB 1113, § 50.
- 49-1541 Repealed. Laws 2012, LB 1113, § 50.
- 49-1542 Repealed. Laws 2012, LB 1113, § 50.
- 49-1543 Repealed. Laws 2012, LB 1113, § 50.
- 49-1544 Repealed. Laws 2012, LB 1113, § 50.
- 49-1545 Repealed. Laws 2012, LB 1113, § 50.
- 49-1546 Repealed. Laws 2012, LB 1113, § 50.
- 49-1547 Repealed. Laws 2012, LB 1113, § 50.
- 49-1548 Repealed. Laws 2012, LB 1113, § 50.
- 49-1549 Repealed. Laws 2012, LB 1113, § 50.
- 49-1550 Repealed. Laws 2012, LB 1113, § 50.
- 49-1551 Repealed. Laws 2012, LB 1113, § 50.
- 49-1552 Repealed. Laws 2012, LB 1113, § 50.
- 49-1553 Repealed. Laws 2012, LB 1113, § 50.
- 49-1554 Repealed. Laws 2012, LB 1113, § 50.
- 49-1555 Repealed. Laws 2012, LB 1113, § 50.
- 49-1556 Repealed. Laws 2012, LB 1113, § 50.
- 49-1557 Repealed. Laws 2012, LB 1113, § 50.
- 49-1558 Repealed. Laws 2012, LB 1113, § 50.
- 49-1559 Repealed. Laws 2012, LB 1113, § 50.
- 49-1560 Repealed. Laws 2012, LB 1113, § 50.
- 49-1561 Repealed. Laws 2012, LB 1113, § 50.

**49-1562 Repealed. Laws 2012, LB 1113, § 50.**

**ARTICLE 17**

**CONSTITUTION OF NEBRASKA**

Section

49-1701. Constitution of Nebraska; Revisor of Statutes; duties; Secretary of State; review; Clerk of the Legislature; duties.

**49-1701 Constitution of Nebraska; Revisor of Statutes; duties; Secretary of State; review; Clerk of the Legislature; duties.**

(1) Except as provided in subsection (6) of this section, following each regular session of the Legislature, the Revisor of Statutes shall compile an updated copy of the Constitution of Nebraska, showing all sections as they exist at that time and including notes after the end of each section as follows:

(a) For each section, the Revisor of Statutes shall provide a note referencing the source of such section and any amendments thereto;

(b) If a section is declared unconstitutional or inoperative, in whole or in part, by the final judgment of a federal court or the Nebraska Supreme Court, the Revisor of Statutes shall provide a note to that effect. The Attorney General shall assist the Revisor of Statutes in complying with this subdivision by promptly notifying the Revisor of Statutes when any section is declared unconstitutional or inoperative; and

(c) For any section, the Revisor of Statutes may provide additional notes at his or her discretion.

(2) The Revisor of Statutes shall, within two days after the Legislature has adjourned sine die, transmit the updated copy of the Constitution of Nebraska as compiled under subsection (1) of this section to the Secretary of State for his or her review to determine whether the updated copy accurately reflects the text of the Constitution of Nebraska as it exists at that time. If the Secretary of State determines that any changes are necessary, he or she shall, within five days after receipt of the updated copy, notify the Revisor of Statutes of the changes. The Revisor of Statutes shall make such changes and then promptly return the updated copy to the Secretary of State for further review. If the Secretary of State determines that no changes are necessary or that all necessary changes have been made by the Revisor of Statutes, the Secretary of State shall certify the updated copy as an accurate reflection of the text of the Constitution of Nebraska as it exists at that time. The Secretary of State shall then transmit the certified copy to the Clerk of the Legislature for distribution no later than ten days after the Legislature has adjourned sine die.

(3) After receiving the certified copy of the Constitution of Nebraska from the Secretary of State pursuant to subsection (2) of this section, the Clerk of the Legislature shall:

(a) Make the certified copy available in electronic form on the Legislature's web site;

(b) Include the certified copy in the session laws compiled and published pursuant to section 49-501.01; and

(c) Print pamphlets of the certified copy for distribution to the public upon request.

(4) The certified copies printed by the Clerk of the Legislature pursuant to subdivisions (3)(b) and (3)(c) of this section shall constitute the official version of the Constitution of Nebraska and may be cited as prima facie evidence of the law in all courts of this state.

(5) The Secretary of State shall maintain in his or her office a copy of every edition of the Constitution of Nebraska certified pursuant to this section.

(6) Following any regular session of the Legislature, if the Revisor of Statutes determines that there have been no changes to the text of the Constitution of Nebraska and no changes to the notes required by subsection (1) of this section, the Revisor of Statutes may decide not to compile an updated copy of the Constitution of Nebraska for that year. If the Revisor of Statutes decides not to compile an updated copy for the year, he or she shall notify the Secretary of State and the Clerk of the Legislature of such fact and the Clerk of the Legislature shall continue to use the most recent year's certified copy for purposes of subsection (3) of this section.

**Source:** Laws 2016, LB686, § 1.

## ARTICLE 18

### UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

#### Section

49-1801. Act, how cited.

49-1802. Definitions.

49-1803. Applicability.

49-1804. Validity of unsworn declaration.

49-1805. Required medium.

49-1806. Form of unsworn declaration.

49-1807. Relation to Electronic Signatures in Global and National Commerce Act.

#### **49-1801 Act, how cited.**

Sections 49-1801 to 49-1807 shall be known and may be cited as the Uniform Unsworn Foreign Declarations Act.

**Source:** Laws 2017, LB57, § 3.

#### **49-1802 Definitions.**

In the Uniform Unsworn Foreign Declarations Act:

(1) Boundaries of the United States means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) Law includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) 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.

(6) Sworn declaration means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) Unsworn declaration means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

**Source:** Laws 2017, LB57, § 4.

#### **49-1803 Applicability.**

The Uniform Unsworn Foreign Declarations Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.

**Source:** Laws 2017, LB57, § 5.

#### **49-1804 Validity of unsworn declaration.**

(a) Except as otherwise provided in subsection (b) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act has the same effect as a sworn declaration.

(b) The act does not apply to:

- (1) a deposition;
- (2) an oath of office;
- (3) an oath required to be given before a specified official other than a notary public;
- (4) a declaration to be recorded pursuant to a filing of a conveyance of or a lien on any interest in real estate;
- (5) a power of attorney; or
- (6) an oath required by section 30-2329.

**Source:** Laws 2017, LB57, § 6.

#### **49-1805 Required medium.**

If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

**Source:** Laws 2017, LB57, § 7.

#### **49-1806 Form of unsworn declaration.**

An unsworn declaration under the Uniform Unsworn Foreign Declarations Act must be in substantially the following form:

I declare under penalty of perjury under the law of the State of Nebraska that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

**§ 49-1806**

**LAW**

Executed on the ..... day of ..... at  
(date) (month) (year)  
....., .....  
(city or other location, and state) (country)  
.....  
(printed name)  
.....  
(signature)

**Source:** Laws 2017, LB57, § 8.

**49-1807 Relation to Electronic Signatures in Global and National Commerce Act.**

The Uniform Unsworn Foreign Declarations Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on January 1, 2017, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

**Source:** Laws 2017, LB57, § 9.

## CHAPTER 50 LEGISLATURE

### Article.

1. General Provisions. 50-114.03.
3. Next Generation Business Growth Act. 50-301 to 50-306.
4. Legislative Council. 50-401.01 to 50-450.
5. Bioscience Steering Committee. 50-501 to 50-508.
6. Whiteclay Public Health Emergency Task Force. 50-601 to 50-603.
11. Legislative Districts. 50-1101 to 50-1154.
12. Legislative Performance Audit Act. 50-1202 to 50-1215.
13. Review of Boards and Commissions. 50-1302.
15. Legislative Qualifications and Election Contests Act. 50-1501 to 50-1520.

### ARTICLE 1 GENERAL PROVISIONS

#### Section

50-114.03. Clerk; reports; list; distribution; establish requirements for reports.

#### **50-114.03 Clerk; reports; list; distribution; establish requirements for reports.**

(1) The Clerk of the Legislature shall periodically prepare and distribute electronically to all members of the Legislature a list of all reports received from state agencies, boards, and commissions. Such lists shall be prepared and distributed to each legislator no less frequently than once during the first ten days of each legislative session. Upon request by a legislator, the clerk shall arrange for any legislator to receive an electronic copy of any such report.

(2) A state agency, board, or commission or other public entity which is required to provide a report to the Legislature shall submit the report electronically. The Clerk of the Legislature may establish requirements for the electronic submission, distribution, and format of such reports. The clerk may accept a report in written form only upon a showing of good cause.

**Source:** Laws 1979, LB 322, § 79; Laws 2003, LB 114, § 1; Laws 2012, LB719, § 2; Laws 2012, LB782, § 74.

### ARTICLE 3 NEXT GENERATION BUSINESS GROWTH ACT

#### Section

- 50-301. Act, how cited.  
 50-302. Legislative findings and intent.  
 50-303. Legislature's Venture Development and Innovation Task Force; created; members; plan; preparation and submission.  
 50-304. Employment of nonprofit organization.  
 50-305. Appropriation intent.  
 50-306. Act, termination.

#### **50-301 Act, how cited.**

Sections 50-301 to 50-306 shall be known and may be cited as the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 1.  
Termination date January 1, 2017.

**50-302 Legislative findings and intent.**

The Legislature finds that there is an important role that innovation and entrepreneurship play in the economic well-being of the state. It is the intent of the Legislature to promote such innovation and entrepreneurship through the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 2.  
Termination date January 1, 2017.

**50-303 Legislature's Venture Development and Innovation Task Force; created; members; plan; preparation and submission.**

(1) The Legislature's Venture Development and Innovation Task Force is created. The Executive Board of the Legislative Council shall appoint six members of the Legislature to the task force. The Executive Board shall appoint one of the six members as chairperson and another member as vice-chairperson.

(2) The task force shall develop a statewide strategic plan to cultivate a climate of entrepreneurship and innovation. The task force shall adopt policy criteria to be used in the development of the plan. The plan shall include: (a) An inventory of existing state-sponsored and locally sponsored programs and resources that are targeted to small businesses, microenterprises, and entrepreneurial endeavors in the state; (b) an economic impact analysis of the existing programs under the Business Innovation Act; (c) an overview of best practices from other states; (d) a review of previously issued statewide strategic plans focused on high-growth businesses; and (e) various policy options.

(3) On or before December 1, 2016, the Legislature's Venture Development and Innovation Task Force shall prepare and electronically submit the statewide strategic plan to the Clerk of the Legislature.

**Source:** Laws 2016, LB1083, § 3.  
Termination date January 1, 2017.

**Cross References**

**Business Innovation Act**, see section 81-12.152.

**50-304 Employment of nonprofit organization.**

The Legislature's Venture Development and Innovation Task Force, in consultation with the Executive Board of the Legislative Council, shall employ a nonprofit organization to provide research, analysis, and recommendations for the development of the statewide strategic plan required by section 50-303.

**Source:** Laws 2016, LB1083, § 4.  
Termination date January 1, 2017.

**50-305 Appropriation intent.**



It is the intent of the Legislature to appropriate seventy-five thousand dollars from the General Fund to the Legislative Council for carrying out the purposes of the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 5.  
Termination date January 1, 2017.

**50-306 Act, termination.**

The Next Generation Business Growth Act terminates on January 1, 2017.

**Source:** Laws 2016, LB1083, § 6.  
Termination date January 1, 2017.

**ARTICLE 4**  
**LEGISLATIVE COUNCIL**

Section

- 50-401.01. Legislative Council; executive board; members; selection; powers and duties.
- 50-405. Legislative Council; duties; investigations; studies.
- 50-406. Legislature; power of inquiry; Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.
- 50-406.01. Subpoena; renewal; procedure; rules; legislative authority; referencing; not justiciable.
- 50-407. Legislative Council; committees; subpoenas; enforcement; refusal to testify; procedure.
- 50-408. Legislative Council; committees; witnesses; fees.
- 50-413. Legislative Council; minutes of meetings; reports.
- 50-415. Legislative Council; members; employees; expenses.
- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.02. Repealed. Laws 2011, LB 509, § 55.
- 50-417.03. Repealed. Laws 2011, LB 509, § 55.
- 50-417.04. Repealed. Laws 2011, LB 509, § 55.
- 50-417.05. Repealed. Laws 2011, LB 509, § 55.
- 50-417.06. Repealed. Laws 2011, LB 509, § 55.
- 50-419. Fiscal analyst; powers and duties.
- 50-419.02. Legislative Fiscal Analyst; revenue volatility report; contents.
- 50-419.03. Long-term fiscal trends; legislative findings and declarations.
- 50-422. Repealed. Laws 2012, LB 782, § 253.
- 50-424. Repealed. Laws 2016, LB746, § 30.
- 50-425. Education Committee of the Legislature; study uses of State Lottery Act proceeds dedicated to education; report.
- 50-426. Statewide vision for education; legislative findings.
- 50-427. Statewide vision for education; Education Committee of the Legislature; duties; report.
- 50-428. Education Committee of the Legislature; study postsecondary education affordability.
- 50-429. Repealed. Laws 2017, LB644, § 21.
- 50-430. Repealed. Laws 2017, LB644, § 21.
- 50-431. Repealed. Laws 2017, LB644, § 21.
- 50-432. Repealed. Laws 2017, LB644, § 21.
- 50-433. Repealed. Laws 2017, LB644, § 21.
- 50-434. Committee on Justice Reinvestment Oversight; created; members; duties; report.
- 50-435. Nebraska Economic Development Task Force; created; members; meetings; report.
- 50-444. Repealed. Laws 2012, LB 706, § 1.
- 50-449. Youth Rehabilitation and Treatment Center-Geneva; legislative findings.

## Section

50-450. Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature; members; staff; powers and duties; termination.

**50-401.01 Legislative Council; executive board; members; selection; powers and duties.**

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 17, 30, 32 to 38, 40 to 44, 47, and 48, two from legislative districts Nos. 2, 3, 15, 16, 19, 21 to 29, 45, and 46, and two from legislative districts Nos. 4 to 14, 18, 20, 31, 39, and 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

**Source:** Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp., 1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485, § 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws

1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1; Laws 2012, LB711, § 1.

**50-405 Legislative Council; duties; investigations; studies.**

It shall be the duty of the council (1) to investigate and study the possibilities for consolidation in state government for elimination of all unnecessary activities and of all duplication in office personnel and equipment and of the coordination of departmental activities or of methods of increasing efficiency and effecting economies, (2) to investigate and study the possibilities of reforming the system of local government with a view to simplifying the organization of government, (3) to study the merit system as it relates to state and local government personnel, (4) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods, (5) to study and inquire into the financial administration of the state government and the subdivisions thereof, the problems of taxation, including assessment and collection of taxes, and the distribution of the tax burden, and (6) to study and inquire into future planning of capital construction of the state and its governmental agencies as to location and sites for expansion.

**Source:** Laws 1937, c. 118, § 3, p. 422; C.S.Supp.,1941, § 50-503; R.S. 1943, § 50-405; Laws 1969, c. 431, § 1, p. 1453; Laws 1986, LB 996, § 1; Laws 2012, LB782, § 75; Laws 2013, LB222, § 17.

**50-406 Legislature; power of inquiry; Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.**

(1) It is within the inherent power of the Legislature, including the Legislative Council and any standing committee of the Legislature, to secure needed information in order to legislate, hold hearings, and administer oaths, as the council or committee deems necessary, and to conduct investigations of matters within the subject matter jurisdiction of the council or committee. This power of inquiry is broad and indispensable.

(2) The Legislative Council may hold public hearings and may administer oaths, issue subpoenas with the prior approval, by a majority vote, of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(3) A standing committee of the Legislature may hold public hearings, administer oaths, and gather information. After receiving prior approval, by a majority vote, of the Executive Board of the Legislative Council, a standing committee may issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(4)(a) A special legislative investigative or oversight committee may hold public hearings, administer oaths, and gather information pursuant to a statute or legislative resolution that provides for a specific legislative inquiry or investigation. In the case of a resolution, such resolution shall have first been adopted by a majority of the members of the Legislature during a legislative

session or by a majority of the members of the Executive Board of the Legislative Council during the interim between legislative sessions.

(b) If authorized to issue subpoenas by statute or by a resolution described in subdivision (4)(a) of this section, a special legislative investigative or oversight committee may issue subpoenas to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court.

(c) A resolution or statute creating a special legislative investigative or oversight committee may prescribe limitations on the authority granted by this section.

(5) When authorized to issue subpoenas under this section, the council or a committee may require any state agency, political subdivision, or person to provide information relevant to the council's or committee's work, and the state agency, political subdivision, or person shall:

(a) Appear at a hearing on the date set in the subpoena; and

(b) Provide the information requested within thirty days after the request except as provided for in the subpoena.

(6) Litigation to compel or quash compliance with authority exercised pursuant to this section and section 50-407 shall be advanced on the trial docket and heard and decided by the court as quickly as possible. The court shall issue its decision no later than twenty days after the filing of the application or petition or a motion to quash, whichever is filed first. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

(7) The district court of Lancaster County has jurisdiction over all litigation arising under this section and section 50-407. In all such litigation, the Executive Board of the Legislative Council shall provide for legal representation for the council or committee.

**Source:** Laws 1937, c. 118, § 4, p. 422; C.S.Supp., 1941, § 50-504; R.S. 1943, § 50-406; Laws 1949, c. 168, § 3, p. 445; Laws 1965, c. 313, § 1, p. 875; Laws 2013, LB613, § 1; Laws 2018, LB193, § 86; Laws 2020, LB681, § 3.  
Effective date November 14, 2020.

**50-406.01 Subpoena; renewal; procedure; rules; legislative authority; referencing; not justiciable.**

(1)(a) If a member of the Legislature presents a newly constituted Legislature with a subpoena issued pursuant to section 50-406 during a previous legislative biennium and such subpoena is still pending:

(i) The Executive Board of the Legislative Council shall vote to determine whether to renew the subpoena; and

(ii) If the subpoena was issued by a standing committee, such committee shall also vote to determine whether to renew the subpoena.

(b) The vote or votes required in subdivision (1)(a) of this section shall be taken no later than ten days after the day the regular session of the Legislature commences as provided in Article III, section 10, of the Constitution of Nebraska.

(c) If a majority of the members of the Executive Board of the Legislative Council and, if applicable, of the committee, are in favor of renewing the subpoena, the subpoena is renewed and relates back to its previous issuance and such subpoena shall be considered to have been in full force and effect for such entire period.

(2) The Legislature has the constitutional authority to determine the rules of its proceedings. The question of the referencing of an investigation or inquiry is not justiciable and cannot be challenged or invalidated in a judicial proceeding.

**Source:** Laws 2020, LB681, § 5.

Effective date November 14, 2020.

**50-407 Legislative Council; committees; subpoenas; enforcement; refusal to testify; procedure.**

(1) In case of disobedience on the part of any person, including a representative of a state agency or political subdivision, to comply with any subpoena issued pursuant to section 50-406 or in case of the refusal of any witness to testify on any matters regarding which the witness may be lawfully interrogated, the Legislative Council or the standing committee or special legislative investigative or oversight committee which issued the subpoena shall, at the hearing at which the person was subpoenaed to appear, hold a vote to find the person in contempt unless the council or committee votes to find that the failure to comply or refusal to testify was not willful.

(2) If the council or committee finds a person in contempt as provided in subsection (1) of this section, the council or committee may, by application or petition to the district court of Lancaster County, request the court to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. The application or petition shall be filed by the chairperson of the Executive Board of the Legislative Council, and in the case of a standing or special legislative investigative or oversight committee, such filing shall be joined by the chairperson of such committee.

(3) If a witness who has been subpoenaed pursuant to section 50-406 refuses to testify before the council or a committee on the basis of the privilege against self-incrimination, a court order may be requested pursuant to sections 29-2011.02 and 29-2011.03. In the case of a proceeding before the Legislative Council, the request shall be filed by the chairperson of the Executive Board of the Legislative Council. In the case of a proceeding before a standing committee or special legislative investigative or oversight committee, the request shall be filed by the chairperson of such committee.

**Source:** Laws 1937, c. 118, § 4, p. 423; C.S.Supp., 1941, § 50-504; R.S. 1943, § 50-407; Laws 1949, c. 168, § 4, p. 445; Laws 1990, LB 1246, § 16; Laws 2013, LB613, § 2; Laws 2020, LB681, § 4.  
Effective date November 14, 2020.

**50-408 Legislative Council; committees; witnesses; fees.**

Each witness who appears before the Legislative Council, any standing committee, or any special legislative investigative or oversight committee by subpoena of such council or committee, other than a state officer or employee, shall receive for attendance the fees provided for witnesses in civil cases in courts of record and mileage as provided in section 81-1176, which shall be

audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the secretary and chairperson of the council.

**Source:** Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-408; Laws 1949, c. 168, § 5, p. 445; Laws 1981, LB 204, § 89; Laws 2020, LB681, § 6.  
Effective date November 14, 2020.

**50-413 Legislative Council; minutes of meetings; reports.**

The Legislative Council shall keep complete minutes of its meetings and shall submit electronically periodical reports to the members of the Legislature.

**Source:** Laws 1937, c. 118, § 9, p. 424; C.S.Supp.,1941, § 50-509; R.S. 1943, § 50-413; Laws 1949, c. 168, § 7, p. 446; Laws 2012, LB782, § 76.

**50-415 Legislative Council; members; employees; expenses.**

(1) The members of the council shall be compensated for actual expenses incurred while attending sessions of the council, and the members of any committee of the council shall be compensated for actual expenses incurred while on business of the committee.

(2) Employees of the Legislature shall be compensated for actual expenses incurred while on the business of the Legislature.

**Source:** Laws 1937, c. 118, § 11, p. 424; C.S.Supp.,1941, § 50-511; R.S.1943, § 50-415; Laws 1951, c. 169, § 3, p. 655; Laws 1981, LB 204, § 90; Laws 2020, LB381, § 42.  
Operative date January 1, 2021.

**50-417 Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.**

The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report electronically the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the Nebraska Retirement Systems Committee regarding passage of any bill or amendment. To assist the committee in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement plans established for them and such other proposed legislation as is pertinent to existing retirement systems.

**Source:** Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2; Laws 2011, LB10, § 1; Laws 2012, LB782, § 77.

**50-417.02 Repealed. Laws 2011, LB 509, § 55.**

**50-417.03 Repealed. Laws 2011, LB 509, § 55.**

**50-417.04 Repealed. Laws 2011, LB 509, § 55.**

**50-417.05 Repealed. Laws 2011, LB 509, § 55.**

**50-417.06 Repealed. Laws 2011, LB 509, § 55.**

**50-419 Fiscal analyst; powers and duties.**

(1) The Legislative Fiscal Analyst shall provide fiscal and budgetary information and assistance to the Legislature and the Appropriations Committee. During sessions of the Legislature he or she shall work under the direction of the Appropriations Committee of the Legislature. During the interim between legislative sessions he or she shall work under the direction of the Executive Board of the Legislative Council.

The Legislative Fiscal Analyst shall provide:

(a) Factual information and recommendations concerning the financial operations of state government;

(b) Evaluation of the requests for appropriations contained in the executive budget and recommendations thereon;

(c) Studies of capital outlay needs for the orderly and coordinated development of state institutions and institutional programs authorized, if not otherwise provided by law;

(d) Plans for legislative appropriation and control of funds, with presession analysis of budgetary requirements; and

(e) The following cycle of analyses of long-term fiscal sustainability, beginning in FY2020-21:

(i) In even-numbered years, the joint revenue volatility report required under section 50-419.02;

(ii) In odd-numbered years, a budget stress test comparing estimated future revenue to and expenditure from major funds and tax types under various potential economic conditions; and

(iii) Every four years, a long-term budget for programs appropriated for major funds and tax types.

(2) His or her duties shall also include examining or auditing functions or services authorized by the Legislature to determine if funds are expended according to legislative intent and whether improvements in organization and performance are possible. The examining function shall also include the appraisal of functions for needed reforms.

(3) His or her duties shall be to coordinate his or her activities with the budget officer of the Department of Administrative Services.

(4) All information and reports of the fiscal analyst and Appropriations Committee shall be available to any and all members of the Legislature.

(5) The Legislative Fiscal Analyst shall provide revenue-forecasting information and assistance to the Legislature, the Revenue Committee of the Legislature, and the Appropriations Committee of the Legislature. For the purposes of this subsection, he or she shall work under the direction of the Revenue Committee of the Legislature and the Appropriations Committee of the Legislature. The revenue-forecasting information provided under this subsection shall include:

(a) The estimated revenue receipts for each year of the following biennium, including comparisons of current estimates for:

- (i) Each major tax type to long-term trends for that tax type;
- (ii) Federal fund receipts to long-term federal fund trends; and
- (iii) Tax collections and federal fund receipts to long-term trends;

(b) General Fund reserve requirements;

(c) A list of express obligations; and

(d) A summary of economic conditions affecting the State of Nebraska.

**Source:** Laws 1961, c. 253, § 2, p. 746; Laws 1967, c. 595, § 3, p. 2027; Laws 1977, LB 193, § 2; Laws 1984, LB 664, § 1; Laws 1986, LB 996, § 4; Laws 1992, LB 988, § 16; Laws 2019, LB713, § 2.

**Cross References**

Nebraska Economic Forecasting Advisory Board, see sections 77-27,156 to 77-27,159.

**50-419.02 Legislative Fiscal Analyst; revenue volatility report; contents.**

(1) On November 15, 2016, the Legislative Fiscal Analyst shall prepare and electronically submit a revenue volatility report to the Appropriations Committee of the Legislature. Every two years thereafter the Legislative Fiscal Analyst shall prepare a revenue volatility report to append to the annual report required under section 77-2715.01. The report shall also be posted on the Legislature's web site.

(2) The report shall:

(a) Evaluate the tax base and the tax revenue volatility of revenue streams that provide funding for the state General Fund budget;

(b) Identify federal funding included in the state budget and any projected changes in the amount or value of federal funding or potential areas in which federal funding could be lost;

(c) Identify current and projected balances of the Cash Reserve Fund;

(d) Analyze the adequacy of current and projected balances of the Cash Reserve Fund in relation to the tax revenue volatility and the risk of a reduction in the amount or value of federal funding or potential areas in which federal funding could be lost;

(e) Include revenue projections for the ensuing two fiscal years included in the impending biennial budget; and

(f) Contain any other recommendations that the Legislative Fiscal Analyst determines are necessary.

**Source:** Laws 2015, LB33, § 1.

**50-419.03 Long-term fiscal trends; legislative findings and declarations.**

The Legislature finds and declares that:

(1) Research conducted since 2009 by the University of Nebraska at the request of the Legislature's Planning Committee shows (a) the population of Nebraska is becoming more concentrated in the most populous counties, with two-thirds of the counties showing dramatic and sustained population loss, (b) the population of Nebraska is aging, and (c) the population of Nebraska is becoming more racially and ethnically diverse;



(2) It is in the best interest of the economy of Nebraska to anticipate long-term fiscal trends;

(3) The Legislative Fiscal Analyst, in partnership with the Legislature's Planning Committee and the University of Nebraska, has a tool to project the long-term fiscal impact of revenue and expenditure measures and changes in federal policy; and

(4) The state is constitutionally prohibited from incurring debt, which, due to downturns in revenue, has caused the Legislature to deplete the cash reserves by more than one-half during the last two biennial budgets. The restoration of cash reserves over the next two biennial budgets is essential if the state is to meet its obligations and adapt to the challenges projected by data accumulated by the Legislature's Planning Committee.

**Source:** Laws 2019, LB713, § 1.

**50-422 Repealed. Laws 2012, LB 782, § 253.**

**50-424 Repealed. Laws 2016, LB746, § 30.**

**50-425 Education Committee of the Legislature; study uses of State Lottery Act proceeds dedicated to education; report.**

The Education Committee of the Legislature shall conduct a study of potential uses of the funds dedicated to education from proceeds of the lottery conducted pursuant to the State Lottery Act. The committee shall submit a report electronically on the findings and any recommendations to the Clerk of the Legislature on or before December 31, 2014. Factors the study shall consider, but not be limited to, include:

- (1) The educational priorities of the state;
- (2) What types of educational activities are suited to being funded by state lottery funds as opposed to state general funds;
- (3) Whether state lottery funds should be used for significant projects requiring temporary funding or to sustain ongoing activities; and
- (4) Whether periodic reviews of the use of lottery funds for education should be scheduled.

**Source:** Laws 2013, LB497, § 3.

**Cross References**

**State Lottery Act**, see section 9-801.

**50-426 Statewide vision for education; legislative findings.**

- (1) The Legislature finds that:
  - (a) In order to continue the pursuit of the good life in Nebraska, a common statewide vision must be refined to address the potential of all students across the state; and
  - (b) Individuals and businesses making reasoned decisions about where to locate often place the quality of education as one of the primary considerations. Quality education not only serves as an indicator of the current quality of life in a community but also as a determinant for what lies ahead.

(2) It is the intent of the Legislature to focus educational resources from all sources in our state toward a common statewide vision for the future through

collaborative efforts to achieve the best possible results for all Nebraskans, our communities, and our state.

**Source:** Laws 2014, LB1103, § 1.

**50-427 Statewide vision for education; Education Committee of the Legislature; duties; report.**

The Education Committee of the Legislature shall conduct a strategic planning process to create the statewide vision for education in Nebraska described in section 50-426 which shall include aspirational goals, visionary objectives, meaningful priorities, and practical strategies. The committee or subcommittees thereof may conduct meetings, work sessions, and focus groups with individuals and representatives of educational interests, taxpayer groups, the business community, or any other interested entities. The committee shall also hold at least three public hearings to receive testimony from the general public in locations that represent a variety of educational situations. The committee shall submit a report regarding such process electronically to the Clerk of the Legislature on or before December 31, 2014.

**Source:** Laws 2014, LB1103, § 2.

**50-428 Education Committee of the Legislature; study postsecondary education affordability.**

The Education Committee of the Legislature shall conduct a study of postsecondary education affordability in Nebraska and alternatives for supporting students and families with the cost. The committee shall electronically report its recommendations to the Clerk of the Legislature on or before December 31, 2015.

**Source:** Laws 2015, LB519, § 39.

**50-429 Repealed. Laws 2017, LB644, § 21.**

**50-430 Repealed. Laws 2017, LB644, § 21.**

**50-431 Repealed. Laws 2017, LB644, § 21.**

**50-432 Repealed. Laws 2017, LB644, § 21.**

**50-433 Repealed. Laws 2017, LB644, § 21.**

**50-434 Committee on Justice Reinvestment Oversight; created; members; duties; report.**

(1) The Legislature finds that while serious crime in the State of Nebraska has not increased in the past five years, the prison population continues to increase as does the amount spent on correctional issues. The Legislature further finds that a need exists to closely examine the criminal justice system of the State of Nebraska in order to increase public safety while concurrently reducing correctional spending and reinvesting in strategies that decrease crime and strengthen Nebraska communities.

(2) It is the intent of the Legislature that the State of Nebraska work cooperatively with the Council of State Governments Justice Center to study and identify innovative solutions and evidence-based practices to develop a data-driven approach to reduce correctional spending and reinvest savings in

strategies that can decrease recidivism and increase public safety and for the executive, legislative, and judicial branches of Nebraska state government to work with the Council of State Governments Justice Center in this process.

(3) The Committee on Justice Reinvestment Oversight is created as a special legislative committee to maintain continuous oversight of the Nebraska Justice Reinvestment Initiative and related issues.

(4) The special legislative committee shall be comprised of five members of the Legislature selected by the Executive Board of the Legislative Council, including the chairperson of the Judiciary Committee of the Legislature who shall serve as chairperson of the special legislative committee.

(5) The Committee on Justice Reinvestment Oversight shall monitor and guide analysis and policy development in all aspects of the criminal justice system in Nebraska within the scope of the justice reinvestment initiative, including tracking implementation of evidence-based strategies as established in Laws 2015, LB605, and reviewing policies to improve public safety, reduce recidivism, and reduce spending on corrections in Nebraska. With assistance from the Council of State Governments Justice Center, the committee shall monitor performance and measure outcomes by collecting data from counties and relevant state agencies for analysis and reporting.

(6) The committee shall prepare and submit an annual report of its activities and findings and may make recommendations to improve any aspect of the criminal justice system. The committee shall deliver the report to the Governor, the Clerk of the Legislature, and the Chief Justice by September 1 of each year. The report to the clerk shall be delivered electronically.

**Source:** Laws 2014, LB907, § 11; R.S.Supp.,2014, § 28-1501; Laws 2015, LB605, § 76.

**50-435 Nebraska Economic Development Task Force; created; members; meetings; report.**

(1) The Legislature finds and declares that economic development is vitally important to the well-being of the State of Nebraska, and that the Legislature and the state would benefit from a more coordinated approach to legislation addressing economic development.

(2) The Nebraska Economic Development Task Force is created. The task force shall collaborate with the Department of Economic Development and the Department of Labor to gather input on issues pertaining to economic development and discuss proactive approaches on economic development. The task force shall monitor analysis and policy development in all aspects of economic development in Nebraska. The task force shall also discuss long-range strategic plans to improve economic development within the state.

(3) The Nebraska Economic Development Task Force shall be composed of three members of the Legislature appointed by the Executive Board of the Legislative Council, one from each congressional district, and the following seven members: The chairperson of the Appropriations Committee of the Legislature or his or her designee, the chairperson of the Banking, Commerce and Insurance Committee of the Legislature or his or her designee, the chairperson of the Business and Labor Committee of the Legislature or his or her designee, the chairperson of the Education Committee of the Legislature or his or her designee, the chairperson of the Revenue Committee of the Legisla-

ture or his or her designee, the chairperson of the Legislature's Planning Committee or his or her designee, and the chairperson of the Urban Affairs Committee of the Legislature or his or her designee. The task force members shall choose a chairperson and vice-chairperson from among the task force members.

(4)(a) The Nebraska Economic Development Task Force shall meet on or before June 15, 2017, and on or before each June 15 thereafter.

(b) Following the meeting required by subdivision (4)(a) of this section, the task force shall meet not less than once every three months, but shall not be required to meet while the Legislature is in session.

(c) Meetings of the task force shall be called by the chairperson.

(d) The task force may ask other persons or entities to attend its meetings or present information at such meetings.

(e) The task force shall annually identify economic development priorities and electronically submit a report to the Legislature on or before December 31, 2017, and on or before each December 31 thereafter.

(5) This section shall terminate on January 1, 2021.

**Source:** Laws 2017, LB641, § 5.

Termination date January 1, 2021.

**50-444 Repealed. Laws 2012, LB 706, § 1.**

**50-449 Youth Rehabilitation and Treatment Center-Geneva; legislative findings.**

The Legislature finds that in the summer of 2019, the Department of Health and Human Services notified the Health and Human Services Committee of the Legislature of deteriorating conditions at the Youth Rehabilitation and Treatment Center-Geneva. Such conditions necessitated the relocation of female youth from the Youth Rehabilitation and Treatment Center-Geneva due to living conditions posing a threat to the health, safety, and welfare of the female youth residing at the facility under court order. The Health and Human Services Committee of the Legislature found, through a series of public hearings and comments during the 2019 interim, that there was a breakdown in the day-to-day operations of the Youth Rehabilitation and Treatment Center-Geneva, including (1) disrepair of the facilities making them uninhabitable, (2) inadequate staffing, (3) a lack of proper behavioral or mental health services and treatment programming, and (4) a lack of health care, including, but not limited to, medication management. The Department of Health and Human Services has released a business plan to reorganize the youth rehabilitation and treatment center model in Nebraska on a condensed timeline without consultation or input from the Legislature or stakeholders with experience and expertise in youth rehabilitation and treatment. The safety, quality of life, and right to a safe treatment environment for these youth is of the utmost concern to the Legislature, and it is clear the Youth Rehabilitation and Treatment Center-Geneva has reached a critical point in its ability to care for the female youth entrusted to its care.

**Source:** Laws 2020, LB1144, § 3.

Effective date November 14, 2020.

**50-450 Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature; members; staff; powers and duties; termination.**

(1) The Executive Board of the Legislative Council shall appoint a special committee of the Legislature to be known as the Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature. The committee shall consist of no more than eleven members of the Legislature appointed by the executive board. Members shall include the chairperson of the Health and Human Services Committee of the Legislature, two other members of the Health and Human Services Committee of the Legislature, one member of the Appropriations Committee of the Legislature, two members of the Education Committee of the Legislature, the chairperson of the Judiciary Committee of the Legislature, one other member of the Judiciary Committee of the Legislature, and one member of the Legislature from each legislative district in which a youth rehabilitation and treatment center is located. The Youth Rehabilitation and Treatment Center Special Oversight Committee shall elect a chairperson and vice-chairperson from the membership of the committee. The executive board may provide the committee with a legal counsel, committee clerk, and other staff as required by the committee from existing legislative staff. The committee may hold hearings and request and receive progress reports from the Department of Health and Human Services regarding the youth rehabilitation and treatment centers.

(2) The Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature may study the quality of care and related issues at the youth rehabilitation and treatment centers. The committee shall provide oversight of the administration and operations, including funding, capacity, and staffing practices at the youth rehabilitation and treatment centers. The committee shall provide oversight for planning at the youth rehabilitation and treatment centers. The committee shall utilize existing studies, reports, and legislation developed to address the conditions existing at the youth rehabilitation and treatment centers. The committee shall not be limited to such studies, reports, or legislation. The committee shall issue a report with its findings and recommendations to the Legislature on or before December 15, 2020.

(3) The Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature shall terminate on December 31, 2020.

**Source:** Laws 2020, LB1144, § 4.

Effective date November 14, 2020.

**ARTICLE 5****BIOSCIENCE STEERING COMMITTEE**

## Section

- 50-501. Bioscience Steering Committee; created; members; prepare strategic plan; commission nonprofit corporation; Biotechnology Development Cash Fund; created; use; investment.
- 50-502. Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.
- 50-503. University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.
- 50-504. Repealed. Laws 2019, LB1, § 1.
- 50-505. Repealed. Laws 2019, LB1, § 1.
- 50-506. Repealed. Laws 2019, LB1, § 1.
- 50-507. Repealed. Laws 2019, LB1, § 1.
- 50-508. Repealed. Laws 2019, LB1, § 1.

**50-501 Bioscience Steering Committee; created; members; prepare strategic plan; commission nonprofit corporation; Biotechnology Development Cash Fund; created; use; investment.**

(1) The Bioscience Steering Committee is created. The committee shall consist of the chairperson of the Revenue Committee of the Legislature or his or her designee, the chairperson of the Appropriations Committee or his or her designee, and three members of the Legislature selected by the Executive Board of the Legislative Council. The executive board shall appoint a chairperson and vice-chairperson of the committee.

(2) The committee shall conduct a study to measure the impact of the bioscience economy in Nebraska and prepare a strategic plan for growing the bioscience economy in Nebraska. The strategic plan shall report on any progress or remaining work since the last study conducted on the bioscience industry. The strategic plan shall further propose strategies for developing the bioscience economy and shall include, but not be limited to, strategies to (a) stimulate job growth in the fields of science, technology, and engineering throughout Nebraska, (b) encourage individuals and organizations engaged in the biotechnology businesses to locate and expand in Nebraska, (c) capture and commercialize technology that is discovered and developed in Nebraska, (d) grow Nebraska's investment capital market and incentivize investment in life science start-up companies, and (e) develop Nebraska's biotechnology workforce in cooperation with higher education institutions. The strategic plan shall estimate the wealth and number of jobs generated from expanding the bioscience economy.

(3) The committee, in consultation with the executive board, shall commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the study and strategic plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged in activities to facilitate and promote the growth of life sciences within Nebraska, and shall be dedicated to the development and growth of the bioscience economy.

(4) The committee shall prepare and present electronically to the Legislature a statewide strategic plan for the bioscience economy during the One Hundred Fifth Legislature, First Session, for consideration by the Legislature.

(5)(a) The Biotechnology Development Cash Fund is created. The money in the fund shall be used to commission the nonprofit corporation and provide access to resources necessary for developing the study and strategic plan.

(b) The fund may receive gifts, bequests, grants, or other contributions or donations from public or private entities. 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 2009, LB246, § 1; Laws 2010, LB911, § 1; Laws 2016, LB1093, § 1.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska Nonprofit Corporation Act**, see section 21-1901.

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

**50-502 Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.**

The Department of Administrative Services shall, on or before December 1 of each year, present its plan regarding the management of the state's health care insurance programs and the health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

**Source:** Laws 2013, LB620, § 1.

**50-503 University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.**

The University of Nebraska shall, on or before December 1 of each year, present its plan regarding the management of the university's health care insurance programs and its health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

**Source:** Laws 2013, LB620, § 2.

**50-504 Repealed. Laws 2019, LB1, § 1.**

**50-505 Repealed. Laws 2019, LB1, § 1.**

**50-506 Repealed. Laws 2019, LB1, § 1.**

**50-507 Repealed. Laws 2019, LB1, § 1.**

**50-508 Repealed. Laws 2019, LB1, § 1.**

## ARTICLE 6

### WHITECLAY PUBLIC HEALTH EMERGENCY TASK FORCE

#### Section

50-601. Whiteclay Public Health Emergency Task Force; created; members.

50-602. Whiteclay Public Health Emergency Task Force; duties.

50-603. Whiteclay Public Health Emergency Task Force; report; contents.

**50-601 Whiteclay Public Health Emergency Task Force; created; members.**

(1) The Whiteclay Public Health Emergency Task Force is created.

(2) The task force shall consist of five voting members: The chairperson of the State-Tribal Relations Committee of the Legislature, an additional member of the State-Tribal Relations Committee of the Legislature, the chairperson of the Health and Human Services Committee of the Legislature or his or her designee, the chairperson of the Appropriations Committee of the Legislature or his or her designee, and the chairperson of the Judiciary Committee of the Legislature or his or her designee. The voting members of the task force shall choose a chairperson and vice-chairperson from among the voting members.

(3) The task force shall also include the following nonvoting, ex officio members: The executive director of the Commission on Indian Affairs or his or her designee, a public health expert, and a data analysis expert from the University of Nebraska Medical Center appointed by the Chancellor of the University of Nebraska Medical Center.

(4) The task force shall consult with (a) advocacy groups that focus on public health issues and economic development issues, (b) academic experts in health care and economic development issues, (c) service providers, (d) educational institutions, (e) workforce development agencies, and (f) experts in public health issues for Native American people.

**Source:** Laws 2017, LB407, § 1.

**50-602 Whiteclay Public Health Emergency Task Force; duties.**

(1) The Whiteclay Public Health Emergency Task Force shall examine public health implications of alcohol sales in Whiteclay, Nebraska, on the Whiteclay community and surrounding areas, including the neighboring Pine Ridge Reservation. The task force shall: (a) Collect, examine, and analyze data on fetal alcohol syndrome and other health conditions related to alcoholism in such areas; (b) collect, examine, and analyze data on access in such areas to detoxification, treatment facilities, telehealth, distance learning, and other health resources for those affected by the consumption of alcohol, including affected children; (c) collect, examine, and analyze data on children in such areas who are at risk of continuing a cycle of alcoholism unless outside intervention is made available; (d) encourage participation and obtain input from academic and medical experts, including, but not limited to, the University of Nebraska Medical Center; (e) encourage and obtain input from nonprofit organizations, faith-based institutions, and city, county, and tribal government officials to evaluate and develop strategies and solutions to help victims escape alcoholism; (f) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs implemented by other states directed toward Native American populations as they relate to preventing and combating alcoholism; (g) evaluate the adequacy of interagency data sharing and policy coordination and recommend changes as necessary; (h) examine sources of federal, state, and private funds that may be available for prevention, detoxification, treatment, rehabilitation, and economic development; (i) create a long-range strategic plan containing measurable goals and benchmarks, including future action needed to attain those goals and benchmarks, for decreasing the incidence of alcohol-related health problems through prevention programs and increasing treatment, access to detoxification services, and economic growth in Whiteclay, Nebraska, and the surrounding areas; and (j) recommend data-supported changes to policies, procedures, and programs to address the needs of children affected by alcohol-related health issues and to help those children escape the cycle of alcoholism, including the steps that will be required to make the recommended changes and whether further action is required by the Legislature or local governments.

(2) To accomplish the objectives set forth in subsection (1) of this section, the task force may request, obtain, review, and analyze information relating to public health issues in Whiteclay, Nebraska, and surrounding areas, including, but not limited to, reports, audits, data, projections, and statistics.

**Source:** Laws 2017, LB407, § 2.

**50-603 Whiteclay Public Health Emergency Task Force; report; contents.**

On or before December 15, 2017, and on or before December 15, 2018, the Whiteclay Public Health Emergency Task Force shall submit a preliminary report to the Governor, the executive director of the Commission on Indian



Affairs, and electronically to the State-Tribal Relations Committee of the Legislature and the Executive Board of the Legislative Council. On or before December 31, 2019, the task force shall submit a final report to the Governor, the executive director of the Commission on Indian Affairs, and electronically to the State-Tribal Relations Committee of the Legislature and the Executive Board of the Legislative Council. The preliminary reports and the final report shall include: (1) The long-range strategic plan required pursuant to section 50-602; (2) a summary of the actions taken by the task force to fulfill its statutory purposes and duties during the time period covered by the report; (3) a description of the policies, procedures, and programs that have been implemented or modified to help rectify the Whiteclay public health emergency; and (4) the task force's recommendations on how the state should act to solve issues relating to the Whiteclay public health emergency and the economic and social issues contributing to the emergency.

The Whiteclay Public Health Emergency Task Force shall terminate on December 31, 2019.

**Source:** Laws 2017, LB407, § 3.

## ARTICLE 11

### LEGISLATIVE DISTRICTS

Section	
50-1101.	Transferred to section 50-1153.
50-1102.	Repealed. Laws 2011, LB 703, § 5.
50-1103.	Repealed. Laws 2011, LB 703, § 5.
50-1104.	Repealed. Laws 2011, LB 703, § 5.
50-1105.	Repealed. Laws 2011, LB 703, § 5.
50-1106.	Repealed. Laws 2011, LB 703, § 5.
50-1107.	Repealed. Laws 2011, LB 703, § 5.
50-1108.	Repealed. Laws 2011, LB 703, § 5.
50-1109.	Repealed. Laws 2011, LB 703, § 5.
50-1110.	Repealed. Laws 2011, LB 703, § 5.
50-1111.	Repealed. Laws 2011, LB 703, § 5.
50-1112.	Repealed. Laws 2011, LB 703, § 5.
50-1113.	Repealed. Laws 2011, LB 703, § 5.
50-1114.	Repealed. Laws 2011, LB 703, § 5.
50-1115.	Repealed. Laws 2011, LB 703, § 5.
50-1116.	Repealed. Laws 2011, LB 703, § 5.
50-1117.	Repealed. Laws 2011, LB 703, § 5.
50-1118.	Repealed. Laws 2011, LB 703, § 5.
50-1119.01.	Repealed. Laws 2011, LB 703, § 5.
50-1120.	Repealed. Laws 2011, LB 703, § 5.
50-1121.	Repealed. Laws 2011, LB 703, § 5.
50-1122.	Repealed. Laws 2011, LB 703, § 5.
50-1123.	Repealed. Laws 2011, LB 703, § 5.
50-1124.	Repealed. Laws 2011, LB 703, § 5.
50-1125.	Repealed. Laws 2011, LB 703, § 5.
50-1126.	Repealed. Laws 2011, LB 703, § 5.
50-1127.	Repealed. Laws 2011, LB 703, § 5.
50-1128.	Repealed. Laws 2011, LB 703, § 5.
50-1129.	Repealed. Laws 2011, LB 703, § 5.
50-1130.	Repealed. Laws 2011, LB 703, § 5.
50-1131.	Repealed. Laws 2011, LB 703, § 5.
50-1132.	Repealed. Laws 2011, LB 703, § 5.
50-1133.	Repealed. Laws 2011, LB 703, § 5.
50-1134.	Repealed. Laws 2011, LB 703, § 5.
50-1135.	Repealed. Laws 2011, LB 703, § 5.

## Section

- 50-1136. Repealed. Laws 2011, LB 703, § 5.  
 50-1137. Repealed. Laws 2011, LB 703, § 5.  
 50-1138. Repealed. Laws 2011, LB 703, § 5.  
 50-1139. Repealed. Laws 2011, LB 703, § 5.  
 50-1140. Repealed. Laws 2011, LB 703, § 5.  
 50-1141.01. Repealed. Laws 2011, LB 703, § 5.  
 50-1142. Repealed. Laws 2011, LB 703, § 5.  
 50-1143. Repealed. Laws 2011, LB 703, § 5.  
 50-1144. Repealed. Laws 2011, LB 703, § 5.  
 50-1145. Repealed. Laws 2011, LB 703, § 5.  
 50-1146. Repealed. Laws 2011, LB 703, § 5.  
 50-1147. Repealed. Laws 2011, LB 703, § 5.  
 50-1148. Repealed. Laws 2011, LB 703, § 5.  
 50-1149. Repealed. Laws 2011, LB 703, § 5.  
 50-1150. Repealed. Laws 2011, LB 703, § 5.  
 50-1152. Transferred to section 50-1154.  
 50-1153. Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.  
 50-1154. Legislative districts; change; when operative.

**50-1101 Transferred to section 50-1153.**

**50-1102 Repealed. Laws 2011, LB 703, § 5.**

**50-1103 Repealed. Laws 2011, LB 703, § 5.**

**50-1104 Repealed. Laws 2011, LB 703, § 5.**

**50-1105 Repealed. Laws 2011, LB 703, § 5.**

**50-1106 Repealed. Laws 2011, LB 703, § 5.**

**50-1107 Repealed. Laws 2011, LB 703, § 5.**

**50-1108 Repealed. Laws 2011, LB 703, § 5.**

**50-1109 Repealed. Laws 2011, LB 703, § 5.**

**50-1110 Repealed. Laws 2011, LB 703, § 5.**

**50-1111 Repealed. Laws 2011, LB 703, § 5.**

**50-1112 Repealed. Laws 2011, LB 703, § 5.**

**50-1113 Repealed. Laws 2011, LB 703, § 5.**

**50-1114 Repealed. Laws 2011, LB 703, § 5.**

**50-1115 Repealed. Laws 2011, LB 703, § 5.**

**50-1116 Repealed. Laws 2011, LB 703, § 5.**

**50-1117 Repealed. Laws 2011, LB 703, § 5.**

**50-1118 Repealed. Laws 2011, LB 703, § 5.**

**50-1119.01 Repealed. Laws 2011, LB 703, § 5.**

**50-1120 Repealed. Laws 2011, LB 703, § 5.**

50-1121 Repealed. Laws 2011, LB 703, § 5.  
50-1122 Repealed. Laws 2011, LB 703, § 5.  
50-1123 Repealed. Laws 2011, LB 703, § 5.  
50-1124 Repealed. Laws 2011, LB 703, § 5.  
50-1125 Repealed. Laws 2011, LB 703, § 5.  
50-1126 Repealed. Laws 2011, LB 703, § 5.  
50-1127 Repealed. Laws 2011, LB 703, § 5.  
50-1128 Repealed. Laws 2011, LB 703, § 5.  
50-1129 Repealed. Laws 2011, LB 703, § 5.  
50-1130 Repealed. Laws 2011, LB 703, § 5.  
50-1131 Repealed. Laws 2011, LB 703, § 5.  
50-1132 Repealed. Laws 2011, LB 703, § 5.  
50-1133 Repealed. Laws 2011, LB 703, § 5.  
50-1134 Repealed. Laws 2011, LB 703, § 5.  
50-1135 Repealed. Laws 2011, LB 703, § 5.  
50-1136 Repealed. Laws 2011, LB 703, § 5.  
50-1137 Repealed. Laws 2011, LB 703, § 5.  
50-1138 Repealed. Laws 2011, LB 703, § 5.  
50-1139 Repealed. Laws 2011, LB 703, § 5.  
50-1140 Repealed. Laws 2011, LB 703, § 5.  
50-1141.01 Repealed. Laws 2011, LB 703, § 5.  
50-1142 Repealed. Laws 2011, LB 703, § 5.  
50-1143 Repealed. Laws 2011, LB 703, § 5.  
50-1144 Repealed. Laws 2011, LB 703, § 5.  
50-1145 Repealed. Laws 2011, LB 703, § 5.  
50-1146 Repealed. Laws 2011, LB 703, § 5.  
50-1147 Repealed. Laws 2011, LB 703, § 5.  
50-1148 Repealed. Laws 2011, LB 703, § 5.  
50-1149 Repealed. Laws 2011, LB 703, § 5.  
50-1150 Repealed. Laws 2011, LB 703, § 5.  
50-1152 Transferred to section 50-1154.

**50-1153 Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.**

(1) The State of Nebraska is hereby divided into forty-nine legislative districts. Each district shall be entitled to one member in the Legislature. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

(2) The numbers and boundaries of the legislative districts are designated and established by maps identified and labeled as maps LEG11-1, LEG11-1A, LEG11-43002E-2, LEG11-43002E-2A, LEG11-2B, LEG11-3, LEG11-4, LEG11-5, LEG11-6, LEG11-7, LEG11-8, LEG11-9, LEG11-10, LEG11-11, LEG11-12, LEG11-13, LEG11-14, LEG11-15, LEG11-16, LEG11-17, LEG11-18, LEG11-19, LEG11-20, LEG11-21, LEG11-21A, LEG11-22, LEG11-23, LEG11-24, LEG11-25, LEG11-25A, LEG11-26, LEG11-27, LEG11-28, LEG11-29, LEG11-30, LEG11-30A, LEG11-31, LEG11-32, LEG11-32A, LEG11-33, LEG11-34, LEG11-34A, LEG11-35, LEG11-36, LEG11-37, LEG11-37A, LEG11-38, LEG11-38A, LEG11-39, LEG11-40, LEG11-41, LEG11-42, LEG11-43002E-43, LEG11-44, LEG11-45, LEG11-46, LEG11-43002E-47, LEG11-48, and LEG11-43002E-49, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB703.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of legislative district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the legislative district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the legislative districts.

**Source:** Laws 1981, LB 406, § 1; R.S.1943, (1987), § 5-201; Laws 1991, LB 614, § 1; Laws 1992, Second Spec. Sess., LB 7, § 1; Laws 2001, LB 852, § 1; R.S.1943, (2010), § 50-1101; Laws 2011, LB703, § 2.

**50-1154 Legislative districts; change; when operative.**

The changes made to this section and section 50-1153 by Laws 2011, LB703, shall become operative on May 27, 2011, except that members of the Legislature from the odd-numbered districts shall be nominated at the primary election in 2012 and elected at the general election in November 2012 for the term commencing January 9, 2013. The members of the Legislature elected or appointed prior to May 27, 2011, shall represent the newly established districts

for the balance of their terms, with each member representing the same numbered district as prior to May 27, 2011.

**Source:** Laws 1981, LB 406, § 52; R.S.1943, (1987), § 5-252; Laws 1991, LB 614, § 52; Laws 1992, LB 946, § 1; Laws 1992, Second Spec. Sess., LB 7, § 7; Laws 1992, Second Spec. Sess., LB 15, § 3; Laws 2001, LB 852, § 51; R.S.1943, (2010), § 50-1152; Laws 2011, LB703, § 3.

## ARTICLE 12

### LEGISLATIVE PERFORMANCE AUDIT ACT

#### Section

- 50-1202. Legislative findings and declarations; purpose of act.  
 50-1203. Terms, defined.  
 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.  
 50-1205. Committee; duties.  
 50-1205.01. Performance audits; standards.  
 50-1206. Performance audits; tax incentive performance audit; how initiated; procedure.  
 50-1208. Performance audit; committee; duties; office; duties.  
 50-1209. Tax incentive performance audits; schedule; contents.  
 50-1210. Report of findings and recommendations; distribution; confidentiality; agency response.  
 50-1211. Committee; review materials; reports; public hearing; procedure.  
 50-1212. Written implementation plan; duties.  
 50-1213. Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.  
 50-1214. Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.  
 50-1215. Violations; penalty.

#### **50-1202 Legislative findings and declarations; purpose of act.**

(1) The Legislature hereby finds and declares that pursuant to section 50-402 it is the duty of the Legislative Council to do independent assessments of the performance of state government organizations, programs, activities, and functions in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action.

(2) The purpose of the Legislative Performance Audit Act is to provide for a system of performance audits to be conducted by the office of Legislative Audit as directed by the Legislative Performance Audit Committee.

(3) It is not the purpose of the act to interfere with the duties of the Public Counsel or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogative of any executive state officer, agency, board, bureau, commission, association, society, or institution, except that the act shall not be construed to preclude a performance audit of an agency on the basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogative of the Governor to monitor and report on the performance of the agencies, boards, bureaus, commissions, associations, societies, and institutions under his or her administrative direction.

**Source:** Laws 1992, LB 988, § 2; Laws 2003, LB 607, § 4; Laws 2013, LB39, § 2.

**50-1203 Terms, defined.**

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, including the Office of Probation Administration and the Office of Public Guardian, but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Office means the office of Legislative Audit;

(9) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(10) Preaudit inquiry means an investigatory process during which the office gathers and examines evidence to determine if a performance audit topic has merit;

(11) Tax incentive performance audit means an evaluation of a tax incentive program pursuant to section 50-1209; and

(12) Working papers means those documents containing evidence to support the office's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the office during the performance audit or preaudit inquiry.

**Source:** Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3; Laws 2013, LB39, § 3; Laws 2015, LB538, § 1; Laws 2016, LB1016, § 1.

**50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.**

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Com-

mittee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. For purposes of tax incentive performance audits authorized in section 50-1209, the committee shall include as nonvoting members the chairperson of the Revenue Committee of the Legislature or his or her designee and one other member of the Revenue Committee, as selected by the Revenue Committee. The Legislative Performance Audit Committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in the Government Auditing Standards (2018 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office shall operate under the general direction of the committee.

**Source:** Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1; Laws 2015, LB538, § 2; Laws 2019, LB561, § 1.

**50-1205 Committee; duties.**

The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Pursuant to section 50-406, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either resid-

ing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the office, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it electronically to the Clerk of the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the office and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the office, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the office during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

**Source:** Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5; Laws 2012, LB782, § 78; Laws 2013, LB39, § 5; Laws 2013, LB222, § 19; Laws 2020, LB681, § 7.

Effective date November 14, 2020.

#### **50-1205.01 Performance audits; standards.**

(1) Except as provided in subsections (2) and (3) of this section, performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2018 Revision), published by the Comptroller General of the United States, Government Accountability Office.

(2) Standards requiring continuing education for employees of the office shall be met as practicable based on the availability of training funds.



(3) The frequency of the required external quality control review shall be determined by the committee.

(4) At the beginning of each biennial legislative session, the Legislative Auditor shall create a plan for meeting such standards and provide the plan to the chairperson of the Legislative Performance Audit Committee.

**Source:** Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2; Laws 2013, LB40, § 2; Laws 2017, LB210, § 1; Laws 2019, LB561, § 2.

**50-1206 Performance audits; tax incentive performance audit; how initiated; procedure.**

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

(5) Tax incentive performance audits shall be initiated as provided in section 50-1209.

**Source:** Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3; Laws 2015, LB538, § 3.

**50-1208 Performance audit; committee; duties; office; duties.**

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the office begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the office shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the office.

(4) After the entrance conference, the office shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the office.

(5) Once the committee has adopted a scope statement, the office shall develop an audit plan. The audit plan shall include a description of the research

and audit methodologies to be employed and a projected deadline for completion of the office's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval. Upon approval of the audit plan, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the office's report. If the office needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the office.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

**Source:** Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8; Laws 2013, LB39, § 6; Laws 2015, LB538, § 4.

**50-1209 Tax incentive performance audits; schedule; contents.**

(1) Tax incentive performance audits shall be conducted by the office pursuant to this section on the following tax incentive programs:

- (a) The Beginning Farmer Tax Credit Act;
- (b) The ImagiNE Nebraska Act;
- (c) The Nebraska Advantage Act;
- (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- (e) The Nebraska Advantage Research and Development Act;
- (f) The Nebraska Advantage Rural Development Act;
- (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
- (h) The New Markets Job Growth Investment Act; and

(i) Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

(2) The office shall develop a schedule for conducting tax incentive performance audits and shall update the schedule annually. The schedule shall ensure that each tax incentive program is reviewed at least once every five years.

(3) Each tax incentive performance audit conducted by the office pursuant to this section shall include the following:

(a) An analysis of whether the tax incentive program is meeting the following goals:

- (i) Strengthening the state's economy overall by:
  - (A) Attracting new business to the state;
  - (B) Expanding existing businesses;
  - (C) Increasing employment, particularly employment of full-time workers.

The analysis shall consider whether the job growth in those businesses receiving tax incentives is at least ten percent above industry averages;

- (D) Creating high-quality jobs; and
  - (E) Increasing business investment;
  - (ii) Revitalizing rural areas and other distressed areas of the state;
  - (iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial firms, high-tech firms, and renewable energy firms; and
  - (iv) Any other program-specific goals found in the statutes for the tax incentive program being evaluated;
- (b) An analysis of the economic and fiscal impacts of the tax incentive program. The analysis may take into account the following considerations in addition to other relevant factors:
- (i) The costs per full-time worker. When practical and applicable, such costs shall be considered in at least the following two ways:
    - (A) By an estimation including the minimum investment required to qualify for benefits; and
    - (B) By an estimation including all investment;
  - (ii) The extent to which the tax incentive changes business behavior;
  - (iii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and
  - (iv) A comparison to the results of other economic development strategies with similar goals, other policies, or other incentives;
- (c) An assessment of whether adequate protections are in place to ensure the fiscal impact of the tax incentive does not increase substantially beyond the state's expectations in future years;
- (d) An assessment of the fiscal impact of the tax incentive on the budgets of local governments, if applicable; and
- (e) Recommendations for any changes to statutes or rules and regulations that would allow the tax incentive program to be more easily evaluated in the future, including changes to data collection, reporting, sharing of information, and clarification of goals.
- (4) For purposes of this section:
- (a) Distressed area means an area of substantial unemployment as determined by the Department of Labor pursuant to the Nebraska Workforce Innovation and Opportunity Act;
  - (b) Full-time worker means an individual (i) who usually works thirty-five hours per week or more, (ii) whose employment is reported to the Department of Labor on two consecutive quarterly wage reports, and (iii) who earns wages equal to or exceeding the state minimum wage;
  - (c) High-quality job means a job that:
    - (i) Averages at least thirty-five hours of employment per week;
    - (ii) Is reported to the Department of Labor on two consecutive quarterly wage reports; and
    - (iii) Earns wages that are at least ten percent higher than the statewide industry sector average and that equal or exceed:

(A) One hundred ten percent of the Nebraska average weekly wage if the job is in a county with a population of less than one hundred thousand inhabitants; or

(B) One hundred twenty percent of the Nebraska average weekly wage if the job is in a county with a population of one hundred thousand inhabitants or more;

(d) High-tech firm means a person or unitary group that has a location with any of the following four-digit code designations under the North American Industry Classification System as assigned by the Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112, 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

(e) Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of each year;

(f) New business means a person or unitary group participating in a tax incentive program that did not pay income taxes or wages in the state more than two years prior to submitting an application under the tax incentive program. For any tax incentive program without an application process, new business means a person or unitary group participating in the program that did not pay income taxes or wages in the state more than two years prior to the first day of the first tax year for which a tax benefit was earned;

(g) Renewable energy firm means a person or unitary group that has a location with any of the following six-digit code designations under the North American Industry Classification System as assigned by the Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160, 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333, 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310, 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210, 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111, 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510, 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730, or 562213;

(h) Rural area means any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents; and

(i) Unitary group has the same meaning as in section 77-2734.04.

**Source:** Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7; Laws 2015, LB538, § 5; Laws 2018, LB936, § 1; Laws 2019, LB334, § 5; Laws 2020, LB1107, § 119.

Operative date January 1, 2021.

#### Cross References

**Beginning Farmer Tax Credit Act**, see section 77-5201.

**ImagiNE Nebraska Act**, see section 77-6801.

**Nebraska Advantage Act**, see section 77-5701.

**Nebraska Advantage Microenterprise Tax Credit Act**, see section 77-5901.

**Nebraska Advantage Research and Development Act**, see section 77-5801.

**Nebraska Advantage Rural Development Act**, see section 77-27,187.

**Nebraska Job Creation and Mainstreet Revitalization Act**, see section 77-2901.

**Nebraska Workforce Innovation and Opportunity Act**, see section 48-3301.

**New Markets Job Growth Investment Act**, see section 77-1101.

**50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.**

(1)(a) Upon completion of a performance audit, the office shall prepare a report of its findings and recommendations for action. Except as provided in subdivision (b) of this subsection, the Legislative Auditor shall provide the office's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote, release the office's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(b) To protect taxpayer confidentiality, for tax incentive performance audits conducted under section 50-1209, the Legislative Auditor may provide the office's report to the agency director up to five business days prior to providing it to the committee and Legislative Fiscal Analyst.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the office's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the office's report or recommendations.

**Source:** Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9; Laws 2012, LB782, § 79; Laws 2013, LB39, § 8; Laws 2015, LB538, § 6; Laws 2017, LB210, § 2.

**50-1211 Committee; review materials; reports; public hearing; procedure.**

(1) The committee shall review the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the office's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal

Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The report submitted to the members of the Legislature shall be submitted electronically. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report. Each tax incentive performance audit report shall also be presented at a joint hearing of the Appropriations Committee and Revenue Committee of the Legislature.

**Source:** Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10; Laws 2012, LB782, § 80; Laws 2013, LB39, § 9; Laws 2015, LB538, § 7.

#### **50-1212 Written implementation plan; duties.**

(1) Within forty business days following the release of the committee report, the agency shall provide to the committee a written implementation plan describing the action planned and timeframe for accomplishment of each of the recommendations contained in the committee report, except that the committee may waive such requirement for tax incentive performance audits.

(2) The agency director shall make every effort to fully implement the recommendations that can be implemented within the limits of the agency's current appropriation. For those recommendations which require additional appropriations or the drafting of legislation, the committee shall work with the appropriate standing committee of the Legislature to ensure legislation is introduced.

(3) The Legislative Performance Audit Committee shall establish a system to ascertain and monitor agency conformity to the recommendations contained in the committee report and compliance with any statutory changes resulting from the report recommendations.

(4) Based on the tax incentive performance audit report, the Revenue Committee of the Legislature shall electronically report its recommendation about whether to extend the sunset date for the audited program to the Legislature by December 1 of the year prior to such program's sunset date.

**Source:** Laws 1992, LB 988, § 12; Laws 2003, LB 607, § 15; Laws 2015, LB538, § 8; Laws 2016, LB1022, § 1.

#### **50-1213 Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.**

(1) The office shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, including, but not limited to, direct access to all agency data bases containing

relevant program information or data, unless the office is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the office access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Upon receipt of a written request by the office for access to any information or records, the agency shall provide to the office as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (1) of this section or (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the office to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of a request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any agency. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

(3) Except as provided in this section, any confidential information or confidential records shared with the office shall remain confidential and shall not be shared by an employee of the office with any person who is not an employee of the office, including any member of the committee.

(4) Except as provided in subsection (11) of section 77-2711 and subdivision (10)(d) of section 77-27,119, if any employee or former employee of the office knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(5) No proceeding of the committee or opinion or expression of any member of the committee or office employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or office employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the office except in a proceeding brought to enforce the Legislative Performance Audit Act.

(6) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or office shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any

information which would be considered confidential when in the possession of the office.

**Source:** Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5; Laws 2013, LB39, § 10; Laws 2015, LB539, § 3; Laws 2016, LB1022, § 2.

**50-1214 Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.**

(1) By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the office or committee.

(2) No employee of the State of Nebraska who provides information to the committee or office shall be subject to any personnel action, as defined in section 81-2703, in connection with his or her employment as a result of the provision of such information.

(3) Any person exercising his or her supervisory or managerial authority to recommend, approve, direct, or otherwise take or affect personnel action in violation of subsection (2) of this section shall be guilty of a Class III misdemeanor and shall be subject to personnel action up to and including dismissal from employment with the state.

**Source:** Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6; Laws 2013, LB39, § 11; Laws 2015, LB539, § 4.

**50-1215 Violations; penalty.**

Any person who willfully fails to comply with the provisions of section 50-1213 or who otherwise willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

**Source:** Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7; Laws 2015, LB539, § 5.

## ARTICLE 13

### REVIEW OF BOARDS AND COMMISSIONS

Section

50-1302. Government, Military and Veterans Affairs Committee; report.

**50-1302 Government, Military and Veterans Affairs Committee; report.**

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted electronically to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

- (a) The name of each board, commission, or similar entity;
- (b) The name of a parent agency, if any;



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- (c) The statutory citation or other authorization for the creation of the board, commission, or entity;
- (d) The number of members of the board, commission, or entity and how the members are appointed;
- (e) The qualifications for membership on the board, commission, or entity;
- (f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;
- (g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and
- (h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

**Source:** Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1; Laws 2012, LB782, § 81.

**ARTICLE 15**

**LEGISLATIVE QUALIFICATIONS AND ELECTION CONTESTS ACT**

Section

- 50-1501. Act, how cited.
- 50-1502. Terms, defined.
- 50-1503. Applicability of act.
- 50-1504. Election contest; qualifications challenge.
- 50-1505. Unsuccessful candidate; rights.
- 50-1506. Election contest; qualifications challenge; when considered; provisions applicable.
- 50-1507. Election contest; qualifications challenge; respondent's rights; decision against member; effect.
- 50-1508. Burden of proof.
- 50-1509. Computation of time.
- 50-1510. Filings; service upon parties.
- 50-1511. Petition; personal service; contents.
- 50-1512. Petition; amendment; personal service.
- 50-1513. Bond.
- 50-1514. Respondent member; file response.
- 50-1515. Attorney's fees and costs.
- 50-1516. Election contest; grounds.
- 50-1517. Examination of ballots; procedure; certification.
- 50-1518. Writ; service; notice.
- 50-1519. Rules and procedures; examination of ballots; certificate; prima facie evidence.
- 50-1520. Jurisdiction to hear challenge.

**50-1501 Act, how cited.**

Sections 50-1501 to 50-1520 shall be known and may be cited as the Legislative Qualifications and Election Contests Act.

**Source:** Laws 2018, LB744, § 8.

**50-1502 Terms, defined.**

For purposes of the Legislative Qualifications and Election Contests Act:

- (1) Committee means the committee of the Legislature designated by the Legislature to conduct proceedings regarding a petition filed under the act;
- (2) Petitioner means a candidate whose name appeared on the ballot at a general election to represent a legislative district as a member of the Legislature who files a petition under the act; and

(3) Respondent member means a candidate proclaimed duly elected to represent the legislative district for which the petitioner was seeking election.

**Source:** Laws 2018, LB744, § 9.

**50-1503 Applicability of act.**

The Legislative Qualifications and Election Contests Act applies to any contest of the election of a member of the Legislature and any challenge of the qualifications of a member of the Legislature.

**Source:** Laws 2018, LB744, § 10.

**50-1504 Election contest; qualifications challenge.**

(1) An election contest pursuant to the Legislative Qualifications and Election Contests Act shall only determine which candidate was properly elected to the Legislature and is entitled to be seated. The election contest shall place in issue only the validity of the results of the election.

(2) A qualifications challenge pursuant to the act shall only determine whether a person elected to the Legislature is qualified to hold or retain the seat for which elected. The qualifications challenge shall place in issue only the qualifications of the person elected as a member of the Legislature under the Constitution of Nebraska.

**Source:** Laws 2018, LB744, § 11.

**50-1505 Unsuccessful candidate; rights.**

Only an unsuccessful candidate whose name appeared on the ballot in the general election to represent a legislative district as a member of the Legislature may contest the election or challenge the qualifications of the person elected as a member of the Legislature to represent that legislative district.

**Source:** Laws 2018, LB744, § 12.

**50-1506 Election contest; qualifications challenge; when considered; provisions applicable.**

(1) The contest of an election or challenge of the qualifications of a person elected as a member of the Legislature by an unsuccessful candidate shall be considered at the next regular session of the Legislature following the general election.

(2) The election contest or qualifications challenge shall be heard and determined in accordance with the Legislative Qualifications and Election Contests Act and the Rules of the Nebraska Unicameral Legislature.

**Source:** Laws 2018, LB744, § 13.

**50-1507 Election contest; qualifications challenge; respondent's rights; decision against member; effect.**

When an election contest or qualifications challenge is pending pursuant to the Legislative Qualifications and Election Contests Act, the respondent member may qualify and take office at the time specified by law and exercise the duties of the office until the election contest or qualifications challenge is decided. If the election contest or qualifications challenge is decided against such member, the Legislature shall order him or her to give up the office to the

petitioner in the election contest or qualifications challenge and deliver to the petitioner all books, records, papers, property, and effects pertaining to the office. The Legislature may enforce such order by attachment or other proper legal process.

**Source:** Laws 2018, LB744, § 14.

**50-1508 Burden of proof.**

The petitioner shall have the burden of proving that the respondent member was not properly elected or qualified to hold office at the time of the election by clear and convincing evidence.

**Source:** Laws 2018, LB744, § 15.

**50-1509 Computation of time.**

If the date for filing or completion of an act under the Legislative Qualifications and Election Contests Act falls on a Saturday, Sunday, or legal holiday, the next business day shall be the deadline for filing or completing the act.

**Source:** Laws 2018, LB744, § 16.

**50-1510 Filings; service upon parties.**

All filings with the Clerk of the Legislature pursuant to the Legislative Qualifications and Election Contests Act, including pleadings, responses, and motions, shall be served upon each of the parties and shall contain a complete certificate of service.

**Source:** Laws 2018, LB744, § 17.

**50-1511 Petition; personal service; contents.**

(1) A petition to contest the election or challenge the qualifications of a person elected as a member of the Legislature shall be filed with the Clerk of the Legislature within forty calendar days after the general election at which the respondent member was elected, and a copy of the petition shall be personally served on the respondent member. The petition shall be verified by affidavit swearing to the truth of the allegations or based on information and belief. The petitioner shall include with the petition filed with the Clerk of the Legislature proof of personal service upon the respondent member.

(2)(a) A petition to contest the election shall contain the names of the voters whose votes are contested, the grounds upon which such votes are illegal, a full statement of any other grounds upon which the election is contested, and the standing of the petitioner to contest the election.

(b) A petition to challenge qualifications shall contain the constitutional grounds on which the respondent member is alleged to be unqualified and the standing of the petitioner to challenge the respondent member's qualifications.

**Source:** Laws 2018, LB744, § 18.

**50-1512 Petition; amendment; personal service.**

(1) A petition to contest the election or challenge the qualifications of a member shall only be amended once within the time period for filing the initial petition under section 50-1511. An amended petition shall be filed with the

Clerk of the Legislature and personally served on the respondent member and shall meet all the elements required for an initial petition.

(2) A petition which is filed or amended after the filing deadline in section 50-1511 or which fails to meet any of the requirements of the Legislative Qualifications and Election Contests Act shall be void, and any rights related thereto shall expire by operation of law.

**Source:** Laws 2018, LB744, § 19.

**50-1513 Bond.**

The petitioner shall file with the Clerk of the Legislature, within five calendar days after filing the petition pursuant to section 50-1511, a bond with security approved by the Clerk of the Legislature conditioned to pay all costs incurred by the Legislature if the election is confirmed or the qualifications of the respondent member are confirmed. The bond shall be in an amount of at least ten thousand dollars as determined by the Clerk of the Legislature. If the Clerk of the Legislature determines that the bond is inadequate, he or she may order an increase in the amount of the bond at any stage of the proceedings.

**Source:** Laws 2018, LB744, § 20.

**50-1514 Respondent member; file response.**

The respondent member may file a response to the petition filed pursuant to section 50-1511 with the Clerk of the Legislature within ten calendar days after receipt of service of the petition. If the respondent member files a response, he or she shall also serve a copy of the response on the petitioner within such ten-day period.

**Source:** Laws 2018, LB744, § 21.

**50-1515 Attorney's fees and costs.**

The prevailing party may request from the opposing party or the state the recovery of attorney's fees and costs incurred in bringing or defending a petition to contest an election or challenge qualifications under the Legislative Qualifications and Election Contests Act. The request shall be filed with the Clerk of the Legislature within fifteen calendar days after the filing of the final report regarding the petition. The request shall include a detailed report of attorney's fees and costs incurred by the prevailing party. The committee may decide that the prevailing party should receive attorney's fees and costs. Any sum awarded shall be reasonable, just, and proper.

**Source:** Laws 2018, LB744, § 22.

**50-1516 Election contest; grounds.**

(1) The election of a person to represent a legislative district as a member of the Legislature may be contested for any or all of the following grounds:

(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 respondent member 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;

(c) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(d) 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;

(e) If the respondent member is in default as a collector and custodian of public money or property; or

(f) For any other cause which shows that another person was legally elected.

(2) 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 or precinct would change the result as to that office.

**Source:** Laws 2018, LB744, § 23.

**50-1517 Examination of ballots; procedure; certification.**

The Legislature or the committee before which a contested election is pending 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 in his or her office the ballots which were cast at the election in contest and to certify the result of such count, comparison, and examination to the Legislature.

**Source:** Laws 2018, LB744, § 24.

**50-1518 Writ; service; notice.**

Any writ issued pursuant to section 50-1517 shall be served without delay on the election commissioner or county clerk by the sheriff of his or her county. The election commissioner or county clerk shall at once fix a day, not more than thirty calendar days after the date of the receipt of such writ, on which he or she will proceed to open such ballots and shall cause notice in writing of the day so fixed to be served on the petitioner or his or her attorney and the respondent member or his or her attorney at least five calendar days before such day. Such notice may be served in the manner provided in section 25-505.01.

**Source:** Laws 2018, LB744, § 25.

**50-1519 Rules and procedures; examination of ballots; certificate; prima facie evidence.**

(1) The Legislature may establish rules and procedures for the recount of ballots. Such rules and procedures may provide for delivery by the election commissioner or county clerk, to the Legislature or the committee, of the ballots or notarized copies of the ballots which were cast at the election in contest. The Legislature shall return such ballots or notarized copies of such ballots to the election commissioner or county clerk at the conclusion of the election contest.

(2) The election commissioner or county clerk shall permit the petitioner, the respondent member, and the attorneys for the parties 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 2018, LB744, § 26.

**50-1520 Jurisdiction to hear challenge.**

Pursuant to Article III, section 10, of the Constitution of Nebraska, the Legislature is vested with the jurisdiction to hear any challenge to the qualifications of a member of the Legislature and is the judge of the elections, returns, and qualifications of its members.

**Source:** Laws 2018, LB744, § 27.

## CHAPTER 51

### LIBRARIES AND MUSEUMS

Article.

2. Public Libraries. 51-211.
4. Nebraska Library Commission.
  - (a) Nebraska Library Commission. 51-402.

#### ARTICLE 2

#### PUBLIC LIBRARIES

Section

51-211. Library board; general powers and duties; governing body; duty; discrimination prohibited.

**51-211 Library board; general powers and duties; governing body; duty; discrimination prohibited.**

(1) The library board may erect, lease, or occupy an appropriate building for the use of a library, appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the board. The governing body of the county, city, or village in which the library is located shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the library board.

(2) The library board may establish rules and regulations for the government of such library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. The library board may fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation and fix and impose reasonable fees, not to exceed the library's actual cost, for nonbasic services. The board shall have and exercise such power as may be necessary to carry out the spirit and intent of sections 51-201 to 51-219 in establishing and maintaining a public library and reading room.

(3) The public library shall make its basic services available without charge to all residents of the political subdivision which supplies its tax support.

(4) No service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

**Source:** Laws 1911, c. 73, § 6, p. 316; R.S.1913, § 3797; Laws 1917, c. 86, § 1, p. 223; C.S.1922, § 3190; C.S.1929, § 51-206; R.S.1943, § 51-211; Laws 1990, LB 1236, § 2; Laws 1997, LB 250, § 22; Laws 2012, LB470, § 2.

ARTICLE 4

NEBRASKA LIBRARY COMMISSION

(a) NEBRASKA LIBRARY COMMISSION

Section

51-402. Nebraska Library Commission; expenses; payment.

(a) NEBRASKA LIBRARY COMMISSION

**51-402 Nebraska Library Commission; expenses; payment.**

The members of the Nebraska Library Commission shall serve without pay. They shall receive remuneration for expenses incurred while engaged in the business of the commission as provided in sections 81-1174 to 81-1177. These expenses shall be paid out of the funds of the Nebraska Library Commission.

**Source:** Laws 1935, c. 115, § 2, p. 370; C.S.Supp.,1941, § 51-502; R.S. 1943, § 51-402; Laws 1972, LB 1033, § 5; Laws 1981, LB 204, § 93; Laws 2020, LB381, § 43.  
Operative date January 1, 2021.



## CHAPTER 52

### LIENS

Article.

1. Construction Lien.
  - (b) Nebraska Construction Lien Act. 52-158.
2. Artisan's Lien. 52-203, 52-204.
5. Thresher's Lien. 52-501, 52-504.
6. Lien for Services Performed Upon Personal Property. 52-603, 52-604.
7. Veterinarian's Lien. 52-701, 52,702.
9. Petroleum Products Lien. 52-903, 52-905.
10. Uniform Federal Lien Registration Act. 52-1004.
11. Fertilizer and Agricultural Chemical Liens. 52-1103, 52-1104.
12. Seed or Electrical Power and Energy Liens. 52-1203, 52-1205.
13. Filing System for Farm Product Security Interests. 52-1307 to 52-1318.
14. Agricultural Production Liens. 52-1407, 52-1409.
16. Master Lien List. 52-1601 to 52-1603.
19. Nonconsensual Common-Law Liens. 52-1901 to 52-1907.
20. Homeowners' Association. 52-2001.
21. Commercial Real Estate Broker Lien Act. 52-2101 to 52-2108.
22. Continuation Statements. 52-2201.

#### ARTICLE 1

#### CONSTRUCTION LIEN

##### (b) NEBRASKA CONSTRUCTION LIEN ACT

Section

52-158. Repealed. Laws 2011, LB 3, § 1.

##### (b) NEBRASKA CONSTRUCTION LIEN ACT

**52-158 Repealed. Laws 2011, LB 3, § 1.**

#### ARTICLE 2

#### ARTISAN'S LIEN

Section

52-203. Lien; effect; priority; limitation; enforcement; fee.

52-204. Lien satisfied; financing statement; termination.

**52-203 Lien; effect; priority; limitation; enforcement; fee.**

A lien created under section 52-202 is in force from and after the date it is filed and is prior and paramount to all other liens upon such property except those previously filed against such property. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within one year after the filing of such lien. The lien is subject to the rights of purchasers of the property against which the lien is filed when the purchasers acquired the property prior to the filing of the lien without knowledge or notice of the rights

of the persons performing the work or furnishing material. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-202 regardless of when the lien was created.

**Source:** Laws 1913, c. 123, § 3, p. 311; R.S.1913, § 3843; C.S.1922, § 3227; C.S.1929, § 52-203; R.S.1943, § 52-203; Laws 1969, c. 436, § 1, p. 1463; Laws 1984, LB 808, § 1; Laws 1998, LB 1321, § 80; Laws 1999, LB 550, § 11; Laws 2001, LB 54, § 2; Laws 2014, LB750, § 2.

**52-204 Lien satisfied; financing statement; termination.**

When a lien created under section 52-202 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1988, LB 943, § 2; Laws 1999, LB 550, § 12; Laws 2001, LB 54, § 3; Laws 2014, LB750, § 3.

**ARTICLE 5**

**THRESHER'S LIEN**

Section

52-501. Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.

52-504. Lien satisfied; financing statement; termination.

**52-501 Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.**

(1)(a) The owner or operator of any threshing machine or combine used in threshing, combining, or hulling grain or seed, (b) the owner or operator of any mechanical cornpicker or mechanical cornhusker used in picking or husking corn, and (c) the owner or operator of any cornsheller used in shelling corn shall have and hold a lien upon such grain, seed, or corn which he or she shall thresh, combine, hull, pick, husk, or shell with such machine to secure the payment to him or her of the charges agreed upon by the person for whom the threshing, combining, hulling, picking, husking, or shelling was done or, if no charges are agreed upon, for such charges as may be reasonable for such threshing, combining, hulling, picking, husking, or shelling.

(2) A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the owner or operator claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person for whom the threshing, combining, hulling, picking, husking, or shelling was done, (c) the amount due for such threshing, combining, hulling, picking, husking, or shelling, (d) the amount of grain, seed, or corn covered by the lien, (e) the place where the grain, seed, or corn is located, and (f) the date on which the threshing, combining, hulling, picking, husking, or shelling was done. Such financing statement shall be filed within thirty days after the threshing, combining, hulling, picking, husking, or shelling was done. The failure to include the social security number or federal tax identification number shall not render any

filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person for whom the threshing, combining, hulling, picking, husking, or shelling was done.

(3) In the event the person for whom the threshing, combining, hulling, picking, husking, or shelling was done desires to sell or deliver the grain, seed, or corn so threshed, combined, hulled, picked, husked, or shelled to a grain elevator or to any other person, such person desiring to sell or deliver the grain, seed, or corn shall notify the consignee or purchaser that the threshing, combining, hulling, picking, husking, or shelling bill has not been paid, and the lien created under this section on such grain, seed, or corn shall shift to the purchase price thereof in the hands of the purchaser or consignee. In the event the grain, seed, or corn is sold or consigned with the consent or knowledge of the person entitled to a lien created under this section within thirty days after the date of such threshing, combining, hulling, picking, husking, or shelling, such lien shall not attach to the grain, seed, or corn or to the purchase price thereof unless the person entitled to the lien notifies the purchaser in writing of the lien.

(4) A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement shall be instituted within thirty days after the filing of the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1923, c. 117, § 1, p. 278; C.S.1929, § 52-501; Laws 1939, c. 83, § 1, p. 266; C.S.Supp.,1941, § 52-501; R.S.1943, § 52-501; Laws 1945, c. 126, § 1, p. 406; Laws 1961, c. 257, § 5, p. 755; Laws 1965, c. 317, § 1, p. 883; Laws 1969, c. 436, § 3, p. 1463; Laws 1984, LB 808, § 2; Laws 1988, LB 943, § 3; Laws 1998, LB 1321, § 81; Laws 1999, LB 550, § 14; Laws 2001, LB 54, § 4; Laws 2014, LB750, § 4.

#### **52-504 Lien satisfied; financing statement; termination.**

When a lien created under section 52-501 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 11; Laws 1988, LB 943, § 4; Laws 1999, LB 550, § 15; Laws 2001, LB 54, § 6; Laws 2014, LB750, § 5.

### **ARTICLE 6**

#### **LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY**

Section

52-603. Lien; how satisfied; sale.

52-604. Sale; proceeds; distribution.

#### **52-603 Lien; how satisfied; sale.**

In accordance with the terms of the notice given as provided by section 52-601.01, a sale of the goods for reasonable value may be had to satisfy any

valid claim of the claimant for which the claimant has a lien on the goods. Such sale shall extinguish any lien or security interest in the goods of a lienholder or security interest holder to which notice of sale was mailed pursuant to section 52-601.01.

**Source:** Laws 1923, c. 118, § 3, p. 281; C.S.1929, § 52-603; R.S.1943, § 52-603; Laws 1974, LB 960, § 2; Laws 2014, LB851, § 2.

**52-604 Sale; proceeds; distribution.**

From the proceeds of such sale the claimant shall make application in the following order: (1) To satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale; and (2) to satisfy the obligations secured by the lien or security interest of any lienholder or security interest holder of record. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt for the balance of such proceeds. The county treasurer shall make proper entry in the books of his or her office of all such proceeds paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lienholder or security interest holder of record whose lien or security interest has not previously been satisfied shall, within such period of five years after such proceeds have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from the county treasurer the amount so deposited with him or her.

**Source:** Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1; Laws 2014, LB851, § 3.

**ARTICLE 7**

**VETERINARIAN'S LIEN**

Section

52-701. Lien; perfection; financing statement; filing; enforcement; fee.

52-702. Lien satisfied; financing statement; termination.

**52-701 Lien; perfection; financing statement; filing; enforcement; fee.**

Whenever any person procures, contracts with, or hires any person licensed to practice veterinary medicine and surgery to treat, relieve, or in any way take care of any kind of livestock, such veterinarian shall have a first, paramount, and prior lien upon such livestock so treated for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of the services and any medicines or biologics furnished. A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within ninety days after the furnishing of the services and any medicines or biologics and shall contain or

have attached thereto (1) the name and address and the social security number or federal tax identification number of the veterinarian claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person to whom the services and medicines or biologics were furnished, (3) a correct description of the livestock to be charged with the lien, and (4) the amount of the services and any medicines or biologics furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the services and medicines or biologics were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1935, c. 117, § 1, p. 432; C.S.Supp.,1941, § 52-701; R.S. 1943, § 52-701; Laws 1969, c. 436, § 4, p. 1465; Laws 1984, LB 808, § 3; Laws 1988, LB 943, § 5; Laws 1998, LB 1321, § 82; Laws 1999, LB 550, § 16; Laws 2001, LB 54, § 7; Laws 2014, LB750, § 6.

**52-702 Lien satisfied; financing statement; termination.**

When a lien created under section 52-701 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 12; Laws 1988, LB 943, § 6; Laws 1999, LB 550, § 17; Laws 2001, LB 54, § 8; Laws 2014, LB750, § 7.

**ARTICLE 9**

**PETROLEUM PRODUCTS LIEN**

Section

52-903. Lien; effect of filing; sale of crop, effect; enforcement.

52-905. Lien satisfied; financing statement; termination.

**52-903 Lien; effect of filing; sale of crop, effect; enforcement.**

From and after the date of the filing of the lien as provided in section 52-902, the person claiming the lien shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant was furnished to the amount of the purchase price of such fuel or lubricant so furnished to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crops so produced, such person shall notify the purchaser or consignee that such fuel or lubricant bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of such purchaser or consignee. In the event any portion of such crops is sold or consigned with the consent or knowledge of the person entitled to a lien thereon within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof unless the person entitled to such lien notifies the purchaser in writing thereof. A lien created under section 52-901 shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

§ 52-903

LIENS

Effective January 1, 2015, this section applies to a lien created under section 52-901 regardless of when the lien was created.

**Source:** Laws 1957, c. 226, § 3, p. 776; Laws 1969, c. 436, § 5, p. 1465; Laws 1987, LB 314, § 1; Laws 1999, LB 550, § 19; Laws 2001, LB 54, § 11; Laws 2014, LB750, § 8; Laws 2019, LB318, § 1.

**52-905 Lien satisfied; financing statement; termination.**

When a lien created under section 52-901 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 13; Laws 1988, LB 943, § 8; Laws 1999, LB 550, § 20; Laws 2001, LB 54, § 13; Laws 2014, LB750, § 9.

ARTICLE 10

UNIFORM FEDERAL LIEN REGISTRATION ACT

Section

52-1004. Notice; filing; fees; billing.

**52-1004 Notice; filing; fees; billing.**

(1) The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall remit each fee received pursuant to this subsection to the State Treasurer for credit to the Secretary of State Cash Fund, except that of the fees received pursuant to this subsection, the Secretary of State shall remit the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

(2) The Secretary of State shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents presented or filed by them.

**Source:** Laws 1969, c. 433, § 4, p. 1458; Laws 1984, LB 808, § 5; Laws 1988, LB 933, § 6; Laws 1998, LB 1321, § 86; Laws 1999, LB 550, § 23; Laws 2012, LB14, § 5; Laws 2017, LB152, § 3; Laws 2017, LB268, § 9; Laws 2020, LB910, § 18.

Operative date July 1, 2021.

ARTICLE 11

FERTILIZER AND AGRICULTURAL CHEMICAL LIENS

Section

52-1103. Lien; time for filing; date of attachment; enforcement.

52-1104. Lien satisfied; financing statement; termination.

**52-1103 Lien; time for filing; date of attachment; enforcement.**

In order to be valid against subsequent lienholders, any lien created under section 52-1101 shall be filed within sixty days after the last date upon which the product, machinery, or equipment was furnished or work or labor was performed under the contract, but in no event shall it have priority over prior lienholders unless prior lienholders have agreed to the contract in writing. Such lien shall attach as of the date of filing. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1101 regardless of when the lien was created.

**Source:** Laws 1977, LB 218, § 3; Laws 1999, LB 550, § 27; Laws 2001, LB 54, § 16; Laws 2014, LB750, § 10.

**52-1104 Lien satisfied; financing statement; termination.**

When a lien created under section 52-1101 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 15; Laws 1988, LB 943, § 10; Laws 1999, LB 550, § 28; Laws 2001, LB 54, § 17; Laws 2014, LB750, § 11.

**ARTICLE 12****SEED OR ELECTRICAL POWER AND ENERGY LIENS**

## Section

52-1203. Lien; date of attachment; enforcement.

52-1205. Lien satisfied; financing statement; termination.

**52-1203 Lien; date of attachment; enforcement.**

A lien created under section 52-1201 shall attach on the date of filing and time thereof if shown. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1201 regardless of when the lien was created.

**Source:** Laws 1985, LB 503, § 3; Laws 1999, LB 550, § 30; Laws 2001, LB 54, § 20; Laws 2014, LB750, § 12.

**52-1205 Lien satisfied; financing statement; termination.**

When a lien created under section 52-1201 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1988, LB 943, § 12; Laws 1999, LB 550, § 31; Laws 2001, LB 54, § 22; Laws 2014, LB750, § 13.

## ARTICLE 13

## FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS

## Section

52-1307.	Effective financing statement, defined.
52-1308.	Farm product, defined.
52-1312.	Central filing system; Secretary of State; duties; system requirements; fees.
52-1313.	Filing of effective financing statement; fees.
52-1313.01.	Effective financing statements; electronic access; fees.
52-1316.	Information provided by filing; oral and written inquiries; duties; fees; liability.
52-1317.	Verification of security interest; seller; duty.
52-1318.	Rules and regulations; federal provisions adopted; Secretary of State; duties.

**52-1307 Effective financing statement, defined.**

Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is filed by the secured party in the office of the Secretary of State;
- (3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the approved unique identifier of the debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;
- (5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. A change in the name or address of the secured party shall not constitute a material change. If the statement is filed electronically, the signature of the debtor shall not be required;
- (6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refileing or filing a continuation statement within six months before the expiration of the five-year period;
- (7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (8) Is accompanied by the requisite filing fee set by section 52-1313; and
- (9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.



An effective financing statement properly filed with a social security number or an Internal Revenue Service taxpayer identification number shall maintain its effectiveness regardless that such numbers are not required on such statement.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61; Laws 2015, LB464, § 1; Laws 2017, LB142, § 1.

**52-1308 Farm product, defined.**

Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, dry peas and lentils, eggs, embryos or genetic products, emu, fish, flax seed, goats, grapes, hay, hemp, hogs, honey, honeydew melon, horses, llamas, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62; Laws 2016, LB1035, § 1; Laws 2020, LB803, § 22; Laws 2020, LB909, § 46.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB803, section 22, with LB909, section 46, to reflect all amendments.

**Note:** Changes made by LB803 became effective November 14, 2020. Changes made by LB909 became operative November 14, 2020.

**52-1312 Central filing system; Secretary of State; duties; system requirements; fees.**

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other digital copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and

shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the approved unique identifier of the debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's approved unique identifier. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive or obtain lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive or obtain. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive or obtain lists described in subdivision (3) of this section. For each farm product list, the fee shall be an amount determined by the Secretary of State not to exceed two hundred dollars per year.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received or obtained by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months as determined by the Secretary of State. The Secretary of State may provide for the distribution or publication of the lists on any medium and establish reasonable charges for such lists, not to exceed the charges provided for in subdivision (4) of this section.

The Secretary of State shall, by rule and regulation, establish the dates upon which the distributions or publications will be made, the dates after which a filing of an effective financing statement will not be reflected on the next distribution or publication of lists, and the dates by which a registrant must complete a registration to receive or obtain the next list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master

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list prior to preparation of the lists required to be distributed or published by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall remit any funds received pursuant to subdivision (4) of this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63; Laws 2015, LB464, § 2; Laws 2016, LB1035, § 2; Laws 2020, LB910, § 19.  
Operative date July 1, 2021.

**52-1313 Filing of effective financing statement; fees.**

(1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall be fourteen dollars if the record is communicated in writing and eleven dollars if the record is communicated by another medium authorized by the Secretary of State. There shall be no fee for the filing of a termination statement.

(3) The Secretary of State shall remit any fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 13; Laws 1998, LB 924, § 22; Laws 1998, LB 1321, § 92; Laws 2003, LB 4, § 3; Laws 2004, LB 1099, § 1; Laws 2007, LB124, § 64; Laws 2020, LB910, § 20.  
Operative date July 1, 2021.

**52-1313.01 Effective financing statements; electronic access; fees.**

(1) The record of effective financing statements maintained by the Secretary of State may be made available electronically through the portal established under section 84-1204. For batch requests, there shall be a fee of two dollars per requested effective financing statement record accessed through the portal, except that the fee for a batch request for one thousand or more effective financing statements shall be two thousand dollars. Effective financing statement data accessed through the portal shall be for informational purposes only and shall not provide the protection afforded a buyer registered pursuant to section 52-1312.

(2) All fees collected pursuant to 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 1998, LB 924, § 23; Laws 2012, LB719, § 3.

**52-1316 Information provided by filing; oral and written inquiries; duties; fees; liability.**

(1) Oral and written inquiries regarding information provided by the filing of effective financing statements may be made at any county clerk's office or the office of the Secretary of State during regular business hours. For each debtor name searched by the county clerk or Secretary of State, the fee for furnishing file information shall be five dollars for each inquiry communicated in writing and four dollars and fifty cents if the inquiry is communicated by another medium authorized by the Secretary of State. Written confirmation of an oral or written inquiry shall be mailed no later than the end of the next business day after the inquiry is received.

(2) The Secretary of State shall provide a system that assigns an identifying number to each inquiry made pursuant to subsection (1) of this section. Such number shall be given to the inquiring party at the time of the oral response and shall be included in the written confirmation. The Secretary of State and the county clerks shall maintain a record of inquiries made under this section identifying who made the inquiry, on whom the inquiry was made, and the date of the inquiry.

(3) The Secretary of State may provide for a computerized system for inquiry and confirmation which may be used in lieu of the inquiry and confirmation under subsection (1) of this section. When such a system is implemented and used, it shall have the same effect as an inquiry and confirmation under subsection (1) of this section.

(4) The county clerk and Secretary of State and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information as required by this section except in cases of willful misconduct or gross negligence.

(5) Fees received pursuant to this section by county clerks shall be deposited in the county general fund. The Secretary of State shall remit the fees received by the Secretary of State pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 16; Laws 1987, LB 101, § 12; Laws 1997, LB 590, § 1; Laws 1998, LB 1321, § 94; Laws 2004, LB 1099, § 2; Laws 2020, LB910, § 21.  
Operative date July 1, 2021.

**52-1317 Verification of security interest; seller; duty.**

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's approved unique identifier.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67; Laws 2015, LB464, § 3.

**52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties.**

(1) The State of Nebraska hereby adopts the federal rules and regulations adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68; Laws 2016, LB1035, § 3.

**Cross References**

Administrative Procedure Act, see section 84-920.

**ARTICLE 14****AGRICULTURAL PRODUCTION LIENS****Section**

52-1407. Lien; perfection; financing statement; filing; priority; enforcement; fee.

52-1409. Lien satisfied; financing statement; termination.

**52-1407 Lien; perfection; financing statement; filing; priority; enforcement; fee.**

(1) An agricultural production input lien shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto the information required in subsection (2) of section 52-1402 and shall be filed within three months after the last date that the agricultural production input was furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. Perfection occurs as of the date such financing statement is filed.

(2) An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-322, Uniform Commercial Code.

(3) An agricultural production input lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. For purposes of enforcement of the lien, the lienholder is the secured party and the person to whom the agricultural production input was furnished is the debtor, and each has the respective rights and duties of a secured party and a debtor under article 9, Uniform Commercial Code.

(4) The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1987, LB 101, § 7; Laws 1988, LB 943, § 16; Laws 1999, LB 550, § 32; Laws 2001, LB 54, § 23; Laws 2014, LB750, § 14.

**52-1409 Lien satisfied; financing statement; termination.**

When an agricultural production input lien is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1987, LB 101, § 9; Laws 1988, LB 943, § 17; Laws 1999, LB 550, § 33; Laws 2001, LB 54, § 24; Laws 2014, LB750, § 15.

**ARTICLE 16**

**MASTER LIEN LIST**

Section

- 52-1601. Master lien list; Secretary of State; compilation.  
 52-1602. Master lien list; distribution or publication; registration to receive or obtain list; fee.  
 52-1603. Buyer of farm products; purchase subject to lien; when; waiver or release of lien.

**52-1601 Master lien list; Secretary of State; compilation.**

The Secretary of State shall compile lien information relative to liens created under Chapter 52, articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2, received by his or her office pursuant to subsection (a) of section 9-530, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

**Source:** Laws 1988, LB 987, § 1; Laws 1999, LB 550, § 34; Laws 2002, LB 957, § 24; Laws 2016, LB1035, § 4.

**52-1602 Master lien list; distribution or publication; registration to receive or obtain list; fee.**

(1) The master lien list prescribed in section 52-1601 shall be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months on the date corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed or published.

(2) Any person may register with the Secretary of State to receive or obtain the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay

the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. A registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive or obtain the master lien lists prescribed in section 52-1601. For each master lien list, the fee shall be an amount determined by the Secretary of State not to exceed two hundred dollars per year. The Secretary of State may provide for the distribution or publication of master lien lists on any medium and may establish reasonable charges for such lists, not to exceed the charges provided for in this subsection.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next distribution or publication of the master lien list and the date by which a registrant shall complete a registration in order to receive or obtain the next master lien list.

(4) The Secretary of State shall remit any funds received pursuant to subsection (2) of this section to the State Treasurer for credit to the Secretary of State Cash Fund.

**Source:** Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69; Laws 2016, LB1035, § 5; Laws 2020, LB910, § 22.  
Operative date July 1, 2021.

**52-1603 Buyer of farm products; purchase subject to lien; when; waiver or release of lien.**

(1) A buyer of farm products who is registered to receive or obtain the master lien list as provided in section 52-1602 and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of any lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is not on the most recent master lien list received or obtained by the buyer pursuant to sections 52-1601 to 52-1605, except that such buyer shall take subject to any such lien if the lien was filed after the last date for inclusion in the most recent distribution or publication of the master lien list and if the buyer has received from the lienholder or seller written notice of the lien. For purposes of this subsection, the form of such written notice of the lien may be a copy of the lien filing. For purposes of this subsection, received or obtained by the buyer means the first date upon which delivery of the master lien list, in whatever form, is attempted by a carrier or, in the case of electronic publication, the first date upon which the Secretary of State made the most current master lien list available electronically, and in all cases in which delivery of the master lien list is involved, a buyer shall be presumed to have received the master lien list ten days after it was mailed by the Secretary of State.

(2) If a buyer buying property subject to a lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and the lienholder of any such lien for such property and if such lienholder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the lien specified to the extent of the amount of the check or instrument. Such waiver or release of the lien shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(3) Except as otherwise provided in the provisions of subsections (1) and (2) of this section, sections 52-1601 to 52-1605 shall not be interpreted or construed to alter liability of buyers of property subject to liens created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14.

**Source:** Laws 1988, LB 987, § 3; Laws 2003, LB 70, § 1; Laws 2016, LB1035, § 6; Laws 2017, LB142, § 2.

## ARTICLE 19

### NONCONSENSUAL COMMON-LAW LIENS

#### Section

52-1901. Nonconsensual common-law lien, defined.

52-1902. Transferred to section 52-1907.

52-1905. Nonconsensual common-law lien; how treated.

52-1906. Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.

52-1907. Submission for filing or recording; liability.

#### **52-1901 Nonconsensual common-law lien, defined.**

For purposes of sections 52-1901 to 52-1907, nonconsensual common-law lien means a document that purports to assert a lien against real or personal property of any person or entity and:

- (1) Is not expressly provided for by a specific state or federal statute;
- (2) Does not depend on the consent of the owner of the real or personal property affected; and
- (3) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

**Source:** Laws 2003, LB 655, § 1; Laws 2013, LB3, § 3.

#### **52-1902 Transferred to section 52-1907.**

#### **52-1905 Nonconsensual common-law lien; how treated.**

A nonconsensual common-law lien is not binding or enforceable at law or in equity. Any nonconsensual common-law lien that is recorded is void and unenforceable.

**Source:** Laws 2013, LB3, § 4.

#### **52-1906 Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.**

In order that the owner of real property upon which a nonconsensual common-law lien is recorded shall have notice of the recording of the lien, the claimant shall cause the sheriff to serve a copy of the recorded lien upon the owner of the real property upon which the nonconsensual common-law lien is recorded and the sheriff shall make return thereof without delay by filing proof of service with the register of deeds as provided in subsection (1) of section 25-507.01. There shall be no filing fee for filing the proof of service. A judicial proceeding to enforce a nonconsensual common-law lien shall be instituted by the claimant within ten days after recording the lien. Failure to serve a copy of the recorded lien upon the owner or failure to file a judicial proceeding to enforce the lien shall cause the lien to lapse and be of no legal effect.

**Source:** Laws 2013, LB3, § 5.



**52-1907 Submission for filing or recording; liability.**

If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of sections 52-1901 and 52-1905 to 52-1907 or section 76-296 and such document is so filed or recorded, the claimant submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

**Source:** Laws 2003, LB 655, § 2; R.S.1943, (2010), § 52-1902; Laws 2013, LB3, § 6.

**ARTICLE 20****HOMEOWNERS' ASSOCIATION**

## Section

52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

**52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.**

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate from the time the assessment becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate recorded before the notice required under subsection (1) of this section has been recorded for a delinquent assessment for which enforcement is sought, and (c) liens for real estate taxes and other governmental assessments or charges against real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(3) Unless the declaration or agreement otherwise provides, if two or more homeowners' associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit actions to recover sums for which subsection (1) of this section creates a lien or prohibit a homeowners' association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) The homeowners' association declaration, agreements, bylaws, rules, or regulations may not provide that a lien on a member's real estate for any assessment levied against real estate relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (1) of this section.

(9) In the event of a conflict between the provisions of the declaration and the bylaws, rules, or regulations or any other agreement of the homeowners' association, the declaration prevails except to the extent the declaration is inconsistent with this section.

(10)(a) The homeowners' association may require a person who purchases restricted real estate on or after September 6, 2013, to make payments into an escrow account established by the homeowners' association until the balance in the escrow account for that restricted real estate is in an amount not to exceed six months of assessments.

(b) All payments made under this subsection and received on or after September 6, 2013, shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the homeowners' association. Upon request by an owner of restricted real estate, the homeowners' association shall disclose the name of the financial institution and the account number where the payments made under this subsection are being held. The homeowners' association may maintain a single escrow account to hold payments made under this subsection from all of the owners of restricted real estate. If a single escrow account is maintained, the homeowners' association shall maintain separate accounting records for each owner of restricted real estate.

(c) The payments made under this subsection may be used by the homeowners' association to satisfy any assessments attributable to an owner of restricted real estate for which assessment payments are delinquent. To the extent that the escrow deposit or any part thereof is applied to offset any unpaid assessments of an owner of restricted real estate, the homeowners' association may require such owner to replenish the escrow deposit.

(d) The homeowners' association shall return the payments made under this subsection, together with any interest earned on such payments, to the owner of restricted real estate when the owner sells the restricted real estate and has fully paid all assessments.

(e) Nothing in this subsection shall prohibit the homeowners' association from establishing escrow deposit requirements in excess of the amounts authorized in this subsection pursuant to provisions in the homeowners' association's declaration.

(11) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a co-owners association organized under the Condominium Property Act or a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

**Source:** Laws 2010, LB736, § 1; Laws 2013, LB442, § 1.

**Cross References**

**Condominium Property Act**, see section 76-801.

**Nebraska Condominium Act**, see section 76-825.

**ARTICLE 21**

**COMMERCIAL REAL ESTATE BROKER LIEN ACT**

**Section**

52-2101. Act, how cited.

52-2102. Terms, defined.

52-2103. Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.

52-2104. Notice of lien; mailing of notice required; effect on lien.

52-2105. Notice of lien; contents.

52-2106. Lien; period of enforceability.

52-2107. Priority of liens.

52-2108. Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

**52-2101 Act, how cited.**

Sections 52-2101 to 52-2108 shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

**Source:** Laws 2013, LB3, § 7.

**52-2102 Terms, defined.**

For purposes of the Commercial Real Estate Broker Lien Act:

(1) Commercial real estate means any real estate other than real estate containing no more than four residential units or real estate on which no

buildings or structures are located and that is zoned for single-family residential use. Commercial real estate does not include single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units;

(2) Commission means any and all compensation that may be due a commercial real estate broker for performance of licensed services; and

(3) Commission agreement means a written agreement with a designated commercial real estate broker as required by subsections (2) through (6) of section 76-2422.

**Source:** Laws 2013, LB3, § 8.

**52-2103 Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.**

(1)(a) A commercial real estate broker shall have a lien upon commercial real estate or any interest in that commercial real estate that is the subject of a purchase, lease, or other conveyance to a buyer or tenant of an interest in the commercial real estate in the amount of commissions that the commercial real estate broker is due.

(b) The lien shall be available only to the commercial real estate broker named in a commission agreement signed by an owner or buyer or their respective authorized agents as applicable and is not available to an employee, agent, subagent, or independent contractor of a commercial real estate broker.

(2) A lien under this section shall attach to commercial real estate or any interest in the commercial real estate when:

(a) The commercial real estate broker is entitled to a commission provided in a commission agreement signed by the owner, buyer, or their respective authorized agents, as applicable; and

(b) The commercial real estate broker records a notice of lien in the office of the register of deeds of the county in which the commercial real estate is located, prior to the actual conveyance or transfer of the commercial real estate against which the commercial real estate broker is claiming a lien, except as provided in this section. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(3) In the case of a lease, including a sublease or an assignment of a lease, the notice of lien shall be recorded not later than ninety days after the tenant takes possession of the leased premises. The lien shall attach as of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(4)(a) If a commercial real estate broker is due an additional commission as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises or to renew or extend a lease pursuant to a commission agreement signed by the then owner, the commercial real estate broker may record its notice of lien at any time after execution of the lease or other commission agreement which contains such option, but not later than ninety days after the event or occurrence on which the future commission is claimed occurs.

(b) In the event that the commercial real estate is sold or otherwise conveyed prior to the date on which a future commission is due, and if the commercial real estate broker has filed a valid notice of lien prior to the sale or other conveyance of the commercial real estate, then the purchaser or transferee shall be deemed to have notice of and shall take title to the commercial real estate subject to the notice of lien. If a commercial real estate broker claiming a future commission fails to record its notice of lien for future commission prior to the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, then such commercial real estate broker shall not claim a lien on the commercial real estate. This subsection shall not limit or otherwise affect claims or defenses a commercial real estate broker or owner or any other party may have on any other basis, in law or in equity.

(5) If a commercial real estate broker has a commission agreement as described in subdivision (4)(a) of this section with a prospective buyer, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the commercial real estate broker in the office of the register of deeds of the county in which the commercial real estate, or any interest in the commercial real estate, is located, within ninety days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

**Source:** Laws 2013, LB3, § 9.

**52-2104 Notice of lien; mailing of notice required; effect on lien.**

The commercial real estate broker shall, within ten days after recording its notice of lien, either mail a copy of the notice of lien to the owner of record of the commercial real estate by registered or certified mail at the address of the owner stated in the commission agreement on which the claim for lien is based or, if no such address is given, then to the address of the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in a United States mailbox with postage prepaid. The commercial real estate broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the manner required by this section.

**Source:** Laws 2013, LB3, § 10.

**52-2105 Notice of lien; contents.**

The notice of lien shall state the name of the commercial real estate broker, the name as reflected in the commercial real estate broker's records of any person the commercial real estate broker believes to be an owner of the commercial real estate on which the lien is claimed, the name as reflected in the commercial real estate broker's records of any person whom the commercial real estate broker believes to be obligated to pay the commission under the commission agreement, a description legally sufficient for identification of the commercial real estate upon which the lien is claimed, and the amount for which the lien is claimed. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signatories. The notice of lien shall be signed by the commercial real estate broker or by a

person authorized to sign on behalf of the commercial real estate broker and shall be notarized.

**Source:** Laws 2013, LB3, § 11.

**52-2106 Lien; period of enforceability.**

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in section 52-2103 shall continue to be enforceable for two years after the recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, mortgage, or trust deed, or other person having an interest in the commercial real estate gives the commercial real estate broker written demand to institute a judicial proceeding within thirty days, the lien lapses unless, within thirty days after receipt of the written demand, the commercial real estate broker institutes judicial proceedings.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

**Source:** Laws 2013, LB3, § 12.

**52-2107 Priority of liens.**

(1) Recorded liens, mortgages, trust deeds, and other encumbrances on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date the commercial real estate broker's lien is recorded, shall have priority over the commercial real estate broker's lien.

(2) A construction lien claim that is recorded after the commercial real estate broker's notice of lien but that relates back to a date prior to the recording date of the commercial real estate broker's notice of lien has priority over the commercial real estate broker's lien.

(3) A purchase-money lien executed by the buyer of commercial real estate in connection with a loan for which any part of the proceeds are used to pay the purchase price of the commercial real estate has priority over a commercial real estate broker's lien claimed for the commission owed by the buyer against the commercial real estate purchased by the buyer.

**Source:** Laws 2013, LB3, § 13.

**52-2108 Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.**

(1) Whenever a notice of a commercial real estate broker's lien has been recorded, the record owner of the commercial real estate may have the lien released by depositing funds equal to the full amount stated in the notice of lien plus fifteen percent to be applied towards any lien under section 52-2103. These funds shall be held in escrow by such person and by such process which may be agreed to by the parties, either in the commission agreement or otherwise, for the payment to the commercial real estate broker or otherwise for resolution for their dispute or, in the absence of any such mutually agreed person or process, the funds may be deposited with the district court by the filing of an interpleader. Upon such deposit of funds by interpleader, the commercial real estate shall be considered released from such lien or claim of lien. Upon written

notice to the commercial real estate broker that the funds have been escrowed or an interpleader filed, the commercial real estate broker shall, within ten business days, record in the office of the register of deeds where the notice of commercial real estate broker's lien was filed pursuant to section 52-2103 a document stating that the lien is released and the commercial real estate released by an escrow established pursuant to this section or by interpleader. If the commercial real estate broker fails to file such document, the person holding the funds may sign and file such document and deduct from the escrow the reasonable cost of preparing and filing the document. Upon the filing of such document, the commercial real estate broker shall be deemed to have an equitable lien on the escrow funds pending a resolution of the commercial real estate broker's claim for payment and the funds shall not be paid to any person, except for such payment to the holder of the funds as set forth in this section, until a resolution of the commercial real estate broker's claim for payment has been agreed to by all necessary parties or ordered by a court having jurisdiction.

(2) Except as otherwise provided in this section, whenever a commercial real estate broker's lien has been recorded and an escrow account is established either from the proceeds from the transaction, conveyance, or any other source of funds computed as one hundred fifteen percent of the amount of the claim for lien, then the lien against the commercial real estate shall be extinguished and immediately become a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to complete or close the transaction.

**Source:** Laws 2013, LB3, § 14.

## ARTICLE 22

### CONTINUATION STATEMENTS

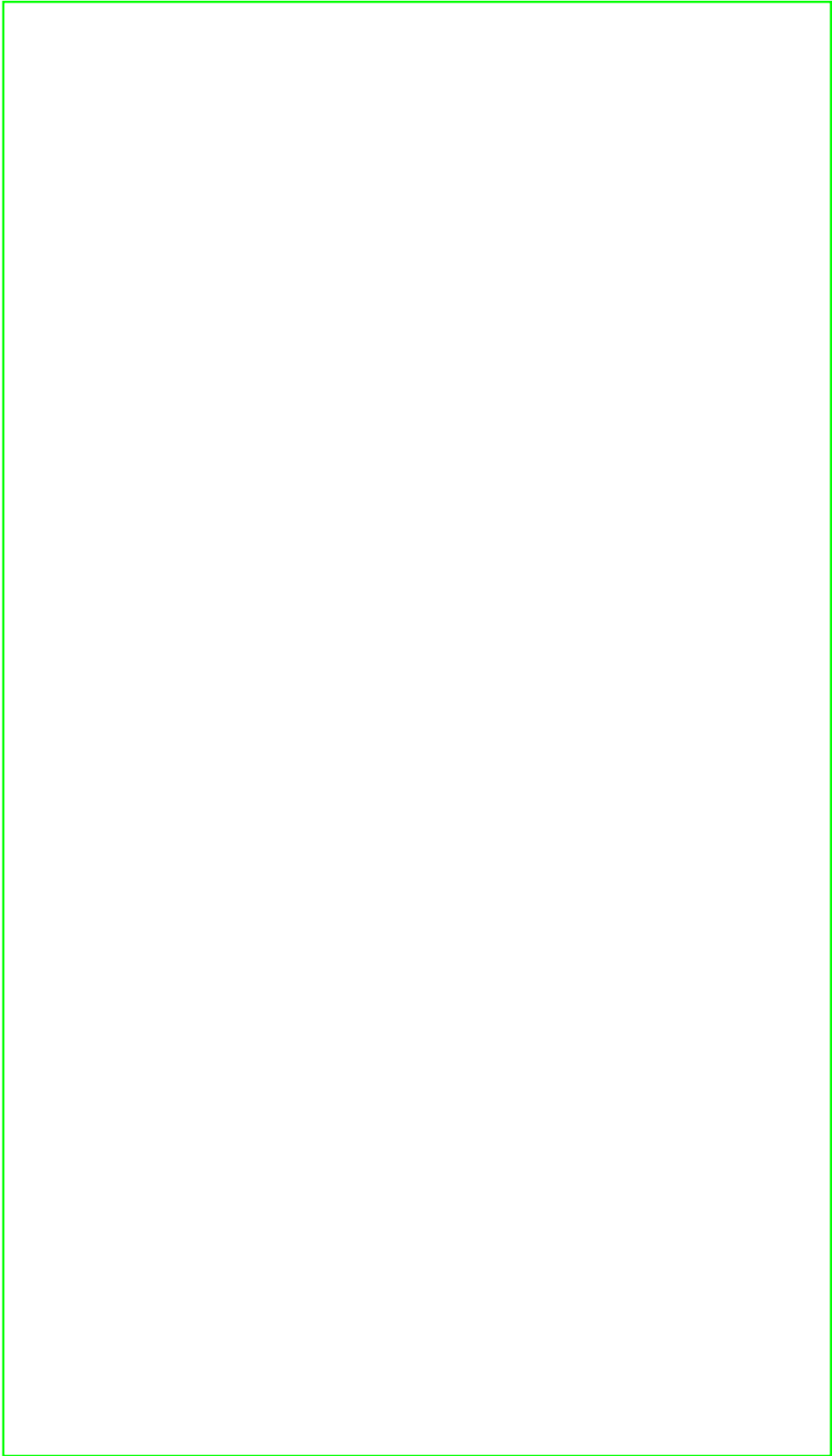
#### Section

52-2201. Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.

**52-2201 Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.**

A financing statement filed to perfect a lien pursuant to sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 52-1401 to 52-1411, 54-201, or 54-208, which was properly filed prior to November 1, 2003, shall lose its perfection unless a continuation statement is filed with the Secretary of State after June 30, 2014, and before January 1, 2015. Such continuation statement shall include a statement that the original financing statement is still effective. The filing of a continuation statement shall preserve the priority of the original filing and shall be effective for five years after the date of filing of the continuation statement and may be subsequently continued as provided in article 9, Uniform Commercial Code. Not later than May 31, 2014, the Secretary of State shall notify, by first-class mail, the lienholders of record of the liens described in this section that such a lien shall lose its perfection unless a continuation statement is filed with the Secretary of State as provided in this section.

**Source:** Laws 2014, LB750, § 1.





**LIQUORS**

**CHAPTER 53  
LIQUORS**

Article.

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  - (d) Licenses; Issuance and Revocation. 53-121 to 53-148.01.
  - (f) Tax. 53-160 to 53-164.01.
  - (h) Keg Sales. 53-167.02, 53-167.03.
  - (i) Prohibited Acts. 53-168.06 to 53-197.
  - (j) Penalties. 53-1,100, 53-1,104.
  - (k) Prosecution and Enforcement. 53-1,111 to 53-1,121.
3. Nebraska Grape and Winery Board. 53-302, 53-304.
5. Nebraska Craft Brewery Board. 53-501 to 53-505.

**ARTICLE 1**

**NEBRASKA LIQUOR CONTROL ACT**

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(a) GENERAL PROVISIONS

**53-101 Act, how cited.**

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1; Laws 2010, LB258, § 1; Laws 2010, LB861, § 7; Laws 2011, LB407, § 1; Laws 2012, LB824, § 1; Laws 2012, LB1130, § 1; Laws 2015, LB118, § 2; Laws 2015, LB330, § 2; Laws 2018, LB1120, § 1; Laws 2020, LB734, § 1.

Effective date November 14, 2020.

**53-103 Definitions, where found.**

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.47 apply.

**Source:** Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 318, § 2, p. 886; Laws 1965, c. 319, § 1, p. 904; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 183, § 1; Laws 1985, LB 279, § 2; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 154, § 1; Laws 1989, LB 441, § 2; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB

278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1; Laws 2009, LB137, § 1; Laws 2009, LB355, § 2; Laws 2010, LB788, § 1; Laws 2010, LB861, § 8; Laws 2012, LB824, § 2; Laws 2015, LB330, § 3; Laws 2018, LB1120, § 2.

**53-103.03 Beer, defined.**

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, near beer, flavored malt beverage, and hard cider.

**Source:** Laws 2010, LB861, § 11; Laws 2012, LB824, § 3; Laws 2015, LB330, § 4.

**53-103.05 Brewpub, defined.**

Brewpub means any restaurant or hotel which produces on its premises a maximum of twenty thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 13; Laws 2012, LB780, § 1.

**53-103.08 Cigar shop, defined.**

Cigar shop means an establishment operated by a holder of a Class C liquor license which:

- (1) Does not sell food;
- (2) In addition to selling alcohol, annually receives ten percent or more of its gross revenue from the sale of cigars, other tobacco products, and tobacco-related products, except from the sale of cigarettes as defined in section 69-2702. A cigar shop shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;
- (3) Has a walk-in humidor on the premises; and
- (4) Does not permit the smoking of cigarettes.

**Source:** Laws 2010, LB861, § 16; Laws 2015, LB118, § 3.

**53-103.09 Club, defined.**

(1) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, and (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests.

(2) The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than

any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club.

**Source:** Laws 2010, LB861, § 17; Laws 2016, LB1105, § 6.

**53-103.13 Farm winery, defined.**

Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least sixty percent of the finished product is grown in this state or which meets the requirements of section 53-123.13.

**Source:** Laws 2010, LB861, § 21; Laws 2019, LB592, § 1.

**53-103.18 Manager, defined.**

Manager means a person appointed by a corporation or limited liability company to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the Nebraska Liquor Control Act as though he or she were the applicant, including residency.

**Source:** Laws 2010, LB861, § 26; Laws 2016, LB1105, § 7.

**53-103.20 Manufacturer, defined.**

Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, restaurant, hotel, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer.

**Source:** Laws 2010, LB861, § 28; Laws 2016, LB1105, § 8.

**53-103.21 Microbrewery, defined.**

Microbrewery means any small brewery producing a maximum of twenty thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 29; Laws 2012, LB780, § 2.

**53-103.38 Spirits, defined.**

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution. Spirits includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances. Spirits does not include flavored malt beverages.

**Source:** Laws 2010, LB861, § 46; Laws 2012, LB824, § 5.

**53-103.41 Wholesaler, defined.**

Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the Nebraska Liquor Control Act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed

to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date.

Wholesaler includes a distributor, distributorship, and jobber.

**Source:** Laws 2010, LB861, § 49; Laws 2016, LB1105, § 9.

**53-103.43 Flavored malt beverage, defined.**

Flavored malt beverage means a beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation, except that in the case of a malt beverage with an alcohol content of more than six percent by volume, not more than one and one-half percent of the volume of the malt beverage may consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation.

**Source:** Laws 2012, LB824, § 4.

**53-103.44 Hard cider, defined.**

Hard cider means still wine (1)(a) derived primarily from apples or apple concentrate and water such that apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, represents more than fifty percent of the volume of the finished product or (b) derived primarily from pears or pear concentrate and water such that pear juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, represents more than fifty percent of the volume of the finished product, (2) containing at least one-half of one percent and less than eight and one-half percent alcohol by volume, (3) having the taste, aroma, and characteristics generally attributed to hard cider, and (4) sold or offered for sale as hard cider.

**Source:** Laws 2015, LB330, § 5; Laws 2016, LB1105, § 10.

**53-103.45 Pedal-pub vehicle, defined.**

Pedal-pub vehicle means a multi-passenger, human-powered vehicle.

**Source:** Laws 2015, LB330, § 6.

**53-103.46 Powdered alcohol, defined.**

Powdered alcohol means alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

**Source:** Laws 2015, LB330, § 7.

**53-103.47 Bottle club, defined.**

Bottle club means an operation, whether formally organized as a club having a regular membership list, dues, officers, and meetings or not, keeping and maintaining premises where persons who have made their own purchases of alcoholic liquor congregate for the express purpose of consuming alcoholic liquor upon the payment of a fee or other consideration.

**Source:** Laws 2018, LB1120, § 3.

## (b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

**53-110 Commissioners and employees; qualifications; employment by licensee authorized; restrictions.**

(1) No person shall be appointed as a commissioner, the executive director of the commission, or an employee of the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment.

(2) No person (a) convicted of or who has pleaded guilty to a felony or any violation of any federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of the Nebraska Liquor Control Act, (b) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (c) who has forfeited his or her bond to appear in court to answer charges for any such violation shall be appointed commissioner.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, no commissioner or employee of the commission may, directly or indirectly, individually, as a member of a partnership, as a member of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale, or distribution, or have any interest whatsoever in the purchases or sales made by the persons authorized by the act to purchase or to sell alcoholic liquor.

(b) With the written approval of the executive director, an employee of the commission, other than the executive director or a division manager, may accept part-time or seasonal employment with a person licensed or regulated by the commission. No such employment shall be approved if the licensee receives more than fifty percent of the licensee's gross revenue from the sale or dispensing of alcoholic liquor.

(4) This section shall not prevent any commissioner, the executive director, or any employee from purchasing and keeping in his or her possession for the use of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any person pursuant to the act.

**Source:** Laws 1935, c. 116, § 11, p. 380; C.S.Supp.,1941, § 53-311; R.S.1943, § 53-110; Laws 1989, LB 780, § 3; Laws 1991, LB 344, § 7; Laws 1993, LB 121, § 318; Laws 2011, LB407, § 2.

**53-112 Commissioners and executive director; compensation; expenses.**

Each member of the commission shall receive an annual salary of not to exceed twelve thousand five hundred dollars, to be fixed by the Governor, payable monthly, and in addition expenses authorized in section 53-113 incurred on behalf of the commission. The salary of the executive director of the commission shall be fixed by the commission, payable monthly.

**Source:** Laws 1935, c. 116, § 13, p. 382; C.S.Supp.,1941, § 53-313; R.S.1943, § 53-112; Laws 1951, c. 338, § 2, p. 1116; Laws 1955, c. 200, § 1, p. 568; Laws 1957, c. 227, § 1, p. 777; Laws 1959, c. 339, § 1, p. 1222; Laws 1967, c. 330, § 1, p. 876; Laws 1969, c. 438, § 1, p. 1468; Laws 1973, LB 111, § 2; Laws 1974, LB 681, § 3; Laws 1989, LB 780, § 5; Laws 2020, LB381, § 44.  
Operative date January 1, 2021.



**53-113 Commissioners and employees; expenses and mileage.**

The commissioners, the executive director of the commission, and all employees of the commission shall be reimbursed for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177. The commission may also incur necessary expenses for office furniture and other incidental expenses. No commissioner, executive director, or employee of the commission shall request or be allowed mileage or other traveling expenses unless such sections are strictly complied with.

**Source:** Laws 1935, c. 116, § 14, p. 382; Laws 1941, c. 180, § 15, p. 709; C.S.Supp.,1941, § 53-314; R.S.1943, § 53-113; Laws 1981, LB 204, § 94; Laws 1988, LB 864, § 8; Laws 1989, LB 780, § 6; Laws 1991, LB 344, § 8; Laws 2020, LB381, § 45.  
Operative date January 1, 2021.

**(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS****53-116.01 Retail licensees; bottle club licensees; inspection of premises; suspend, cancel, or revoke license; when; charter bus; inspection; when.**

(1) The commission and local governing bodies shall cause frequent inspection to be made on the premises of all retail licensees and bottle club licensees, and if it is found that any such licensee is violating any provision of the Nebraska Liquor Control Act or the rules and regulations of the commission adopted and promulgated under the act or is failing to observe in good faith the purposes of the act, the license may be suspended, canceled, or revoked after the licensee is given an opportunity to be heard in his or her defense.

(2) The commission and local governing bodies may inspect a charter bus providing service under a certificate of public convenience and necessity granted by the Public Service Commission when the owner or operator of the charter allows the consumption of alcoholic liquor in the charter bus by an individual who is twenty-one years of age or older so long as the inspection is performed when the bus has stopped for the purpose of allowing passengers to embark or disembark.

**Source:** Laws 1935, c. 116, § 103, p. 429; C.S.Supp.,1941, § 53-3,103; R.S.1943, § 53-146; Laws 1957, c. 231, § 1, p. 790; Laws 1959, c. 249, § 15, p. 873; Laws 1977, LB 176, § 1; Laws 1980, LB 848, § 10; R.S.1943, (1988), § 53-146; Laws 1991, LB 344, § 9; Laws 2004, LB 485, § 4; Laws 2018, LB1120, § 5; Laws 2020, LB734, § 2.  
Effective date November 14, 2020.

**53-116.02 Licensee; violations; forfeiture or revocation of license.**

Whenever any retail licensee, bottle club licensee, craft brewery licensee, or microdistillery licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

**Source:** Laws 1935, c. 116, § 47, p. 403; C.S.Supp.,1941, § 53-347; R.S.1943, § 53-128; Laws 1989, LB 781, § 7; R.S.Supp.,1990,

§ 53-128; Laws 1991, LB 344, § 10; Laws 1993, LB 183, § 4; Laws 1999, LB 267, § 4; Laws 2004, LB 485, § 5; Laws 2007, LB549, § 3; Laws 2018, LB1120, § 6.

**53-117 Powers, functions, and duties.**

The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, boats, bottle clubs, special party buses, and pedal-pub vehicles in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license or bottle club license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee

and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

**Source:** Laws 1935, c. 116, § 16, p. 382; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-117; Laws 1959, c. 245, § 1, p. 842; Laws 1965, c. 318, § 4, p. 891; Laws 1967, c. 332, § 1, p. 879; Laws 1974, LB 681, § 4; Laws 1980, LB 848, § 2; Laws 1981, LB 545, § 15; Laws 1988, LB 1089, § 6; Laws 1989, LB 781, § 4; Laws 1991, LB 344, § 11; Laws 1993, LB 183, § 5; Laws 1999, LB 267, § 5; Laws 2004, LB 485, § 6; Laws 2013, LB579, § 1; Laws 2015, LB330, § 9; Laws 2018, LB1120, § 7; Laws 2020, LB734, § 3. Effective date November 14, 2020.

**53-117.03 Employee and management training; commission; powers and duties; fees; certification.**

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the administrative costs, including salary and benefits, of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the administrative costs, including salary and benefits, associated with maintaining a list of

persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and the person seeking certification paying the certification fee established under this section.

**Source:** Laws 2006, LB 845, § 3; Laws 2013, LB199, § 22.

**53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.**

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any administrative costs, including salary and benefits, incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1989, LB 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1; Laws 2009, First Spec. Sess., LB3, § 28; Laws 2013, LB199, § 23.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission.**

All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, boats, special party buses, and pedal-pub vehicles shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or

revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

**Source:** Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4; Laws 2015, LB330, § 10; Laws 2020, LB734, § 4.

Effective date November 14, 2020.

#### **53-119.01 Fire safety inspection; fee.**

The commission may request the State Fire Marshal to inspect for fire safety pursuant to section 81-502 any premises for which an annually renewable retail license or bottle club license, or renewal of such a license, is sought. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 which shall be payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 1983, LB 498, § 1; Laws 2004, LB 485, § 7; Laws 2018, LB1120, § 8.

#### (d) LICENSES; ISSUANCE AND REVOCATION

#### **53-121 Repealed. Laws 2014, LB 863, § 31.**

#### **53-122 Sale of liquor by drink; license issuance authorized; exception.**

The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

**Source:** Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963, c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570; Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34; Laws 2010, LB861, § 51; Laws 2014, LB863, § 23.

#### **53-123 Licenses; types.**

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; (14) microdistillery license; (15) entertainment district license;

(16) pedal-pub vehicle license; (17) bottle club license; and (18) special party bus license.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5; Laws 2012, LB1130, § 2; Laws 2015, LB330, § 11; Laws 2018, LB1120, § 9; Laws 2020, LB734, § 5.

Effective date November 14, 2020.

**53-123.01 Manufacturer's license; rights of licensee; craft brewery license holder; when required to obtain manufacturer's license; rights of holder.**

(1) A manufacturer's license shall allow the manufacture, storage, and sale of alcoholic liquor to wholesale licensees in this state and to such persons outside the state as may be permitted by law, except that nothing in the Nebraska Liquor Control Act shall prohibit a manufacturer of beer from distributing tax-paid samples of beer at the premises of a licensed manufacturer for consumption on the premises. A manufacturer's license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer manufactured on the licensed premises for consumption on the licensed premises.

(2)(a) A licensee who or which first obtains a craft brewery license pursuant to section 53-123.14, holds such license for not less than three years, and operates a brewpub or microbrewery on the licensed premises of such craft brewery license shall obtain a manufacturer's license when the manufacture of beer on the licensed premises exceeds twenty thousand barrels per year. The manufacturer's license shall authorize the continued retail sale of beer for consumption on or off the premises but only to the extent the premises were previously licensed as a craft brewery. The sale of any beer other than beer manufactured by the licensee, wine, or alcoholic liquor for consumption on the licensed premises shall require the appropriate retail license. The holder of such manufacturer's license may continue to operate up to five retail locations which are in operation at the time such manufacturer's license is issued and shall divest itself from retail locations in excess of five locations. The licensee shall not begin operation at any new retail location even if the licensee's production is reduced below twenty thousand barrels per year.

(b) The holder of such manufacturer's license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(1), p. 617; Laws 1947, c. 188, § 1(1), p. 621; Laws 1982, LB 431, § 1; Laws 1991, LB 344, § 17; Laws 1996, LB 750, § 4; Laws 2016, LB1105, § 11.

**53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.**

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the retail license, on the premises specified in the retail license or the entertainment district license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws 1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 154, § 2; Laws 1989, LB 441, § 3; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2; Laws 2012, LB1130, § 3.

#### **53-123.08 Bottle club license; rights of licensee.**

(1) A bottle club may be operated by a club, an individual, a partnership, a limited liability company, or a corporation. An accurate and current membership list shall be maintained upon the licensed premises which contains the names and residences of the members but shall not be subject to disclosure except as required by warrant, subpoena, or court order.

(2) A bottle club shall not operate on any day between the hours of 5 a.m. and 6 a.m.

(3) The holder of a bottle club license shall not simultaneously hold another license under the Nebraska Liquor Control Act.

(4) The holder of a bottle club license shall be subject to all provisions of the Nebraska Liquor Control Act and the rules and regulations adopted and

promulgated under the act that govern the operation of retail licensees except as otherwise provided in subsection (2) of this section.

**Source:** Laws 2018, LB1120, § 4.

**53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.**

(1) A farm winery license shall entitle the holder to:

(a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;

(b) Sell wines produced at the farm winery at retail for consumption on the premises as designated pursuant to section 53-123.12;

(c) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine. If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk;

(d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;

(e) Allow sampling and sale of the wine at the farm winery and at four branch outlets in the state in reasonable amounts;

(f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008;

(g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery; and

(h) Store and warehouse products produced at the farm winery in a designated, secure, offsite storage facility if the holder of the farm winery license notifies the commission of the location of the facility and maintains, at the farm winery and at the facility, a separate perpetual inventory of the product stored at the facility. Consumption of alcoholic liquor at the facility is strictly prohibited.

(2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.



(3) A farm winery may manufacture and sell hard cider on its licensed premises. A farm winery shall not otherwise distribute the hard cider it manufactures except by sale to a wholesaler licensed under the Nebraska Liquor Control Act.

(4) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.

(5) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

**Source:** Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2; Laws 2010, LB861, § 52; Laws 2015, LB330, § 12; Laws 2019, LB592, § 2; Laws 2020, LB1056, § 4. Effective date August 16, 2020.

**53-123.12 Farm winery license; application requirements; renewal; fees; licensed premises; temporary expansion; procedure.**

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

(5)(a) A farm winery licensee may apply to the local governing body for a temporary expansion of the licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall comply with the Nebraska Liquor Control Act for con-

sumption on the premises and shall be subject to the following conditions: (i) The temporary area shall be enclosed during the temporary expansion by a temporary fence or other means approved by the county, city, or village; (ii) the temporary area shall have easily identifiable entrances and exits; and (iii) the licensee shall ensure that the area meets all sanitation requirements for a licensed premises. The local governing body shall electronically notify the commission within five days after the authorization of any temporary expansion pursuant to this subsection.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

**Source:** Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53; Laws 2011, LB407, § 3; Laws 2020, LB1056, § 5.  
Effective date August 16, 2020.

### **53-123.13 Farm winery; waiver of requirement; when; conditions.**

(1) If the operator of a farm winery is unable to produce or purchase sixty percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes

substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the sixty-percent requirement prescribed in section 53-103.13 for one year.

(2) It shall be within the discretion of the commission to waive the sixty-percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

(3) If the operator of a farm winery is granted a waiver, any product purchased as concentrated juice from grapes or other fruits from outside of Nebraska, when reconstituted from concentrate, may not exceed in total volume along with other products purchased the total percentage allowed by the waiver.

(4) Any product purchased under the waiver or as part of the forty percent of allowable product purchased that is not Nebraska-grown for the production of wine shall not exceed the forty percent volume allowed under state law if made from concentrated grapes or other fruit, when reconstituted. The concentrate shall not be reduced to less than twenty-two degrees Brix in accordance with 27 C.F.R. 24.180.

**Source:** Laws 1985, LB 279, § 6; Laws 1986, LB 871, § 2; Laws 1989, LB 441, § 5; Laws 1991, LB 344, § 24; Laws 1994, LB 859, § 5; Laws 2004, LB 485, § 13; Laws 2008, LB1103, § 3; Laws 2010, LB861, § 54; Laws 2019, LB592, § 3.

#### **53-123.14 Craft brewery license; rights of licensee.**

Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit the production of a maximum of twenty thousand barrels of beer per year in the aggregate from all physical locations comprising the licensed premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the licensed premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17. For purposes of this section, licensed premises may include up to five separate physical locations.

**Source:** Laws 1988, LB 1089, § 3; Laws 1991, LB 344, § 25; Laws 1994, LB 1292, § 3; Laws 1996, LB 750, § 5; Laws 2012, LB780, § 3; Laws 2012, LB1130, § 4; Laws 2016, LB1105, § 12.

#### **53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.**

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other

than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund, except that the fee received for a shipping license issued to a beer manufacturer pursuant to this subsection shall be credited to the Nebraska Beer Industry Promotional Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any manufacturer who sells and ships alcoholic liquor from another state directly to a consumer in this state if the manufacturer satisfies the requirements of subsections (7) through (9) of this section. A manufacturer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacture direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(6) The application for a shipping license under subsection (2) or (3) of this section shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection

and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine.

(7) The application for a shipping license under subsection (4) or (5) of this section shall be in such form as the commission prescribes. The application shall require an applicant which is a manufacturer, a craft brewery, a craft distillery, or a farm winery to identify the brands of alcoholic liquor that the applicant is requesting the authority to ship either into or within Nebraska. For all applicants, unless otherwise provided in this section, the application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers or retailers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States;

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers or retailers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine;

(d) That the applicant agrees to notify the commission of any violations in the state in which he or she is domiciled and any violations of the direct shipping laws of any other states. Failure to notify the commission within thirty days after such a violation may result in a hearing before the commission pursuant to which the license may be suspended, canceled, or revoked; and

(e) That the applicant, if a manufacturer, craft brewery, craft distillery, or farm winery, agrees to notify any wholesaler licensed in Nebraska that has been authorized to distribute such brands that the application has been filed for a shipping license. The notice shall be in writing and in a form prescribed by the commission. The commission may adopt and promulgate rules and regulations as it reasonably deems necessary to implement this subdivision, including rules and regulations that permit the holder of a shipping license under this subdivision to amend the shipping license by, among other things, adding or deleting any brands of alcoholic liquor identified in the shipping license.

(8) Any manufacturer or retailer who is granted a shipping license under subsection (4) or (5) of this section shall:

(a) Only ship the brands of alcoholic liquor identified on the application;

(b) Only ship alcoholic liquor that is owned by the holder of the shipping license;

(c) Only ship alcoholic liquor that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;

(d) Not ship any alcoholic liquor products that the manufacturers or wholesalers licensed in Nebraska have voluntarily agreed not to bring into Nebraska at the request of the commission;

(e) Not ship more than nine liters of alcoholic liquor per month to any person in Nebraska to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale; and

(f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to provide common carriage of alcoholic liquor shipped by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he or she is at least twenty-one years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

(9) For purposes of sections 53-160, 77-2703, and 77-27,142, each shipment of alcoholic liquor by the holder of a shipping license under subsection (3), (4), or (5) of this section shall constitute a sale in Nebraska by establishing a nexus in the state. The holder of the shipping license shall collect all the taxes due to the State of Nebraska and any political subdivision and remit any excise taxes monthly to the commission and any sales taxes to the Department of Revenue.

(10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

**Source:** Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1; Laws 2011, LB286, § 1; Laws 2013, LB230, § 1; Laws 2015, LB330, § 13; Laws 2016, LB1105, § 13; Laws 2018, LB1120, § 10.

**53-123.16 Microdistillery license; rights of licensee.**

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

**Source:** Laws 2007, LB549, § 6; Laws 2012, LB1130, § 5.

**53-123.17 Entertainment district license; rights of licensee; application; fee; commission; duties; occupation tax; local governing body; powers.**

(1) A local governing body may designate an entertainment district in which a commons area may be used by retail, craft brewery, and microdistillery licensees and holders of a manufacturer's license which obtain an entertainment district license. The local governing body may, at any time, revoke such designation if it finds that the commons area threatens the health, safety, or welfare of the public or has become a common nuisance. The local governing body shall file the designation or the revocation of the designation with the commission.

(2) An entertainment district license allows the sale of alcoholic liquor for consumption on the premises within the confines of a commons area. The consumption of alcoholic liquor in the commons area shall only occur during the hours authorized for sale of alcoholic liquor for consumption on the premises under section 53-179 and while food service is available in the commons area. Only the holder of an entertainment district license or employees of such licensee may sell or dispense alcoholic liquor in the commons area.

(3) An entertainment district licensee shall serve alcoholic liquor to be consumed in the commons area in containers that prominently displays the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, microdistillery license, or manufacturer's license. An entertainment district licensee may allow alcohol sold by another entertainment district licensee to enter the licensed premises of either licensee. No entertainment district licensee shall allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, microdistillery license, or manufacturer's license.

(4) If the licensed premises of the holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a manufacturer's license is adjacent to a commons area in an entertainment district designated by a local governing body pursuant to this section, the holder of the license may obtain an annual entertainment district license as prescribed in this section. The entertainment district license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or manufacturer's license.

(5) In order to obtain an entertainment district license, a person eligible under subsection (4) of this section shall:

(a) File an application with the commission upon such forms as the commission prescribes; and

(b) Pay an additional license fee of three hundred dollars for the privilege of serving alcohol in the entertainment district payable to the clerk of the local governing body in the same manner as license fees under subdivision (4) of section 53-134.

(6) When an application for an entertainment district license is filed, the commission shall notify the clerk of the local governing body. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(7) The local governing body may impose an occupation tax on the business of an entertainment district licensee doing business within the liquor license jurisdiction of the local governing body as provided in subdivision (11)(b) of this section in accordance with section 53-132.

(8) The local governing body with respect to entertainment district licensees within its liquor license jurisdiction as provided in subdivision (11)(b) of this section may cancel an entertainment district license for cause for the remainder of the period for which such entertainment district license is issued. Any person whose entertainment district license is canceled may appeal to the commission in accordance with section 53-134.

(9) A local governing body may regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, any area it designates as an entertainment district.

(10) Violation of any provision of this section or any rules or regulations adopted and promulgated pursuant to this section by an entertainment district licensee may be cause to revoke, cancel, or suspend the retail license issued under subsection (6) of section 53-124, craft brewery license, microdistillery license, or manufacturer's license held by such licensee.

(11) For purposes of this section:

(a) Commons area means an area:

(i) Within an entertainment district designated by a local governing body;

(ii) Shared by authorized licensees with entertainment district licenses;

(iii) Abutting the licensed premises of such licensees;

(iv) Having limited pedestrian accessibility by use of a physical barrier, either on a permanent or temporary basis; and

(v) Closed to vehicular traffic when used as a commons area.



Commons area may include any area of a public or private right-of-way if the area otherwise meets the requirements of this section; and

(b) Local governing body means the governing body of the city or village in which the entertainment district licensee is located.

**Source:** Laws 2012, LB1130, § 6; Laws 2016, LB1105, § 14.

#### **53-123.18 Special party bus license.**

(1) The commission may issue a license to any person providing special party bus service under a certificate of public convenience and necessity granted by the Public Service Commission when the person allows the consumption of alcoholic liquor in its special party bus by an individual who is twenty-one years of age or older. Each licensee shall keep a duplicate of such license in each special party bus where such alcoholic liquor is consumed.

(2) Each license shall expire on April 30 of each year. Each license shall be good throughout this state as a state license. Only one license shall be required for all special party buses operated in this state by the same owner. No further license shall be required or tax levied by any county, city, or village for the privilege of allowing consumption of alcoholic liquor in such buses.

**Source:** Laws 2020, LB734, § 6.

Effective date November 14, 2020.

#### **53-124 Licenses; types; classification; fees; where paid; license year.**

(1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, a special party bus license, a pedal-pub vehicle license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license, a special party bus license, a pedal-pub vehicle license, or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;
- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be six classes of retail licenses:

(i) Class A: Beer only, for consumption on the premises;

(ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;

(iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subdivision (6)(a)(vi) of this section and subsection (2) of section 53-123.04;

(v) Class I: Alcoholic liquor, for consumption on the premises; and

(vi) Class J: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, for a retail licensee whose annual gross revenue from the sale of alcohol does not exceed twenty percent of the licensee's total annual gross revenue from all retail sales.

(b) All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(7) There shall be four types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, manufacture direct sales, and retail direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) There shall be a bottle club license. All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(10) The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in section 53-124.01, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location

which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

**Source:** Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 53, § 3; Laws 1993, LB 183, § 9; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7; Laws 2009, LB355, § 3; Laws 2010, LB861, § 56; Laws 2010, LB867, § 2; Laws 2013, LB230, § 2; Laws 2015, LB330, § 16; Laws 2016, LB1105, § 15; Laws 2018, LB1120, § 11; Laws 2020, LB734, § 7.

Effective date November 14, 2020.

**53-124.01 Fees for annual licenses.**

(1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

- (2) Airline license . . . \$100
- (3) Boat license . . . \$50
- (4) Bottle club license . . . \$300
- (5) Special party bus license . . . \$75
- (6) Manufacturer’s license:

Class	Fee - In Dollars
Alcohol and spirits	1,000
Beer - tier one	100
Beer - tier two	200
Beer - tier three	350
Beer - tier four	500
Beer - tier five	650
Beer - tier six	700
Beer - tier seven	800
Wine	250

(7) Nonbeverage user’s license:

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Class	Fee - In Dollars
Class 1	5
Class 2	25
Class 3	50
Class 4	100
Class 5	250

**(8) Operator's license:**

Class	Fee - In Dollars
Craft brewery	250
Farm winery	250
Microdistillery	250

(9) Pedal-pub vehicle license . . . \$50

(10) Railroad license . . . \$100

**(11) Retail license:**

Class	Fee - In Dollars
Class A	100
Class B	100
Class C	300
Class D	200
Class I	250
Class J	50

**(12) Shipping license:**

Class	Fee - In Dollars
Manufacturer	1,000
Vintage wines	1,000
Manufacture direct sales	500
Retail direct sales	500

**(13) Wholesale license:**

Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

**Source:** Laws 2010, LB861, § 57; Laws 2013, LB230, § 3; Laws 2015, LB330, § 17; Laws 2016, LB1105, § 16; Laws 2018, LB1120, § 12; Laws 2020, LB734, § 8.  
Effective date November 14, 2020.

**53-124.11 Special designated license; issuance; procedure; fee.**

(1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, the holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, holders of manufacturer's licenses issued pursuant to subsection (2) of section 53-123.01, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the

time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered electronically to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

**Source:** Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8; Laws 2010, LB861, § 58; Laws 2016, LB1105, § 17; Laws 2019, LB56, § 1.

**53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.**

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, a farm winery license, or a manufacturer's license issued under subsection (2) of section 53-123.01 may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, farm winery license, or manufacturer's license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

**Source:** Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59; Laws 2011, LB407, § 4; Laws 2016, LB1105, § 18.

**53-124.13 Catering licensee; special designated license; application; procedure; proceeds; violation; penalty.**

(1) The holder of a catering license may deliver, sell, or dispense alcoholic liquor, including beer, for consumption at premises designated in a special designated license issued pursuant to section 53-124.11.

(2) The holder of the catering license shall file an application seeking a special designated license for the event. The application shall be filed at least twenty-one days prior to the event for which the special designated license is requested unless the local governing body has established an expedited process for such applications, in which case the application shall be filed at least twelve days prior to the event. In addition to the information required by subsection (3) of section 53-124.11, the applicant shall inform the commission of (a) the time of the event, (b) the name of the person or organization requesting the applicant's services, (c) the opening and closing dates of the event, and (d) any other information the commission or local governing body deems necessary. A holder of a catering license shall not cater an event unless such licensee receives a special designated license for the event.

(3) If the organization for which the holder of a catering license is catering is a nonprofit organization exempted from the payment of federal income taxes, such organization may share with such licensee a part or all of the proceeds from the sale of any alcoholic liquor sold and dispensed pursuant to this section.

(4) For purposes of this section, local governing body means the governing body of the city or village in which the event will be held or, if the event will not be held within the corporate limits of a city or village, the governing body of the county in which such event will be held.

(5) Only the holder of a special designated license or employees of such licensee may dispense alcoholic liquor at the event which is being catered. Violation of any provision of this section or section 53-124.12 or any rules or regulations adopted and promulgated pursuant to such sections occurring during an event being catered by such licensee may be cause to revoke, cancel, or suspend the class of retail license issued under section 53-124 held by such licensee.

**Source:** Laws 1988, LB 490, § 2; Laws 1991, LB 344, § 29; Laws 2010, LB861, § 60; Laws 2019, LB56, § 2.

**53-124.14 Applicants outside cities and villages; airport authorities; Nebraska State Fair Board; issuance of licenses; when permitted.**

(1) The commission may license the sale of alcoholic liquor at retail in the original package to applicants who reside in any county in which there is no incorporated city or village or in which the county seat is not located in an incorporated city or village if the licensed premises are situated in an unincorporated village having a population of twenty-five inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(2) The commission may license the sale of beer at retail in any county outside the corporate limits of any city or village therein and license the sale of alcoholic liquor at retail for consumption on the premises and off the premises, sales in the original package only.

(3) The commission may license the sale of alcoholic liquor for consumption on the premises as provided in subdivision (6)(a)(iii) of section 53-124 on lands controlled by airport authorities when such land is located on and under county jurisdiction or by the Nebraska State Fair Board.

**Source:** Laws 1991, LB 582, § 2; Laws 2001, LB 278, § 6; Laws 2002, LB 1236, § 17; Laws 2004, LB 485, § 18; Laws 2010, LB861, § 61; Laws 2017, LB113, § 47.

**53-125 Classes of persons to whom no license issued.**

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, boat, or special party bus licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a Nebraska resident and legally able to work in Nebraska, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or



12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 28, p. 395; C.S.Supp.,1941, § 53-328; R.S.1943, § 53-125; Laws 1957, c. 230, § 1, p. 788; Laws 1959, c. 249, § 3, p. 864; Laws 1965, c. 318, § 7, p. 897; Laws 1967, c. 332, § 7, p. 887; Laws 1971, LB 752, § 2; Laws 1973, LB 111, § 6; Laws 1975, LB 414, § 2; Laws 1976, LB 204, § 3; Laws

1979, LB 224, § 1; Laws 1980, LB 848, § 5; Laws 1983, LB 213, § 10; Laws 1986, LB 871, § 3; Laws 1991, LB 344, § 30; Laws 1993, LB 121, § 319; Laws 1994, LB 1292, § 6; Laws 2010, LB788, § 2; Laws 2010, LB861, § 62; Laws 2016, LB1105, § 19; Laws 2020, LB734, § 9.

Effective date November 14, 2020.

**53-129 Retail, bottle club, craft brewery, and microdistillery licenses; premises to which applicable; temporary expansion; procedure.**

(1) Except as otherwise provided in subsection (3) of this section, retail, bottle club, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application. For retail, bottle club, and microdistillery licenses, only one location shall be described in each license. For craft brewery licenses, up to five separate physical locations may be described in each license.

(2) After such license has been granted for the particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by the local governing body. In order to obtain such approval, the retail, bottle club, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises, as added to or deleted from or to which such move is to be made, comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

(3)(a) A retail, bottle club, craft brewery, or microdistillery licensee may apply to the local governing body for a temporary expansion of its licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall otherwise comply with all requirements of the Nebraska Liquor Control Act.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

**Source:** Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10; Laws 2010, LB861, § 63; Laws 2016, LB1105, § 20; Laws 2018, LB1120, § 13; Laws 2020, LB1056, § 6.

Effective date August 16, 2020.

**53-130 Licenses; manufacturers, wholesalers, railroads, airlines, boats, special party buses, pedal-pub vehicles, and nonbeverage users; conditions on issuance; fees; renewal.**

(1) New licenses to manufacturers, wholesalers, railroads, airlines, boats, special party buses, pedal-pub vehicles, and nonbeverage users of alcoholic liquor may be issued by the commission upon (a) written application in duplicate filed in the manner and on such forms as the commission prescribes and in which the applicant for a beer wholesale license sets forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (b) receipt of bond, (c) payment in advance of the nonrefundable application fee of forty-five dollars and the license fee, and (d) such notice and hearing as the commission fixes by its own order.

(2) A notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer wholesale license and upon any existing wholesaler licensed to sell the brand or brands in the described sales territory.

(3) A license so issued may be renewed without formal application upon payment of license fees and a renewal fee of forty-five dollars prior to or within thirty days after the expiration of the license. The payment of such fees shall be

an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application.

**Source:** Laws 1935, c. 116, § 81, p. 417; C.S.Supp.,1941, § 53-381; R.S.1943, § 53-130; Laws 1959, c. 247, § 1, p. 848; Laws 1959, c. 249, § 5, p. 865; Laws 1967, c. 332, § 8, p. 888; Laws 1971, LB 234, § 19; Laws 1972, LB 66, § 2; Laws 1991, LB 202, § 3; Laws 1991, LB 344, § 32; Laws 2000, LB 973, § 5; Laws 2010, LB861, § 64; Laws 2015, LB330, § 18; Laws 2020, LB734, § 10. Effective date November 14, 2020.

**53-131 Retail, bottle club, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; cigar shop; information required; renewal; fee.**

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a bottle club license, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application upon forms prescribed by the commission, including the information required by subsection (3) of this section for an application to operate a cigar shop;

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar shop shall be one thousand dollars.

(2) The commission shall notify the clerk of the city or village in which such license is sought or, if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall include one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receipt by mail or electronic delivery of such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar shop, the application shall include proof of the cigar shop's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar shop. The commission may adopt and promulgate rules and regulations to regulate cigar shops. The rules and regulations existing on August 1, 2014, applicable to cigar bars shall apply to cigar shops until amended or repealed by the commission.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

**Source:** Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959,

c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65; Laws 2011, LB407, § 5; Laws 2015, LB118, § 4; Laws 2015, LB330, § 19; Laws 2018, LB1120, § 14.

**53-131.01 License; application; form; contents; criminal history record check; verification; false statement; penalty.**

(1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a resident of Nebraska and legally able to work in Nebraska, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

**Source:** Laws 1935, c. 116, § 99, p. 427; C.S.Supp.,1941, § 53-399; R.S.1943, § 53-142; Laws 1959, c. 249, § 13, p. 872; Laws 1979, LB 224, § 4; Laws 1980, LB 848, § 9; Laws 1991, LB 344, § 35; Laws 2003, LB 267, § 1; Laws 2016, LB1105, § 21.

**53-132 Retail, bottle club, craft brewery, or microdistillery license; commission; duties.**

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, bottle club license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, bottle club license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

- (a) The recommendation of the local governing body;
- (b) The existence of a citizens' protest made in accordance with section 53-133;
- (c) The existing population of the city, village, or county and its projected growth;
- (d) The nature of the neighborhood or community of the location of the proposed licensed premises;
- (e) The existence or absence of other retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;
- (f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;
- (g) The adequacy of existing law enforcement;
- (h) Zoning restrictions;
- (i) The sanitation or sanitary conditions on or about the proposed licensed premises; and
- (j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered

to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county except as otherwise provided in subsection (6) of this section. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

(6) Class J retail licensees shall not be subject to occupation taxes under subsection (4) of this section.

**Source:** Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 228, § 3, p. 780; Laws 1957, c. 242, § 45, p. 856; Laws 1959, c. 246, § 1, p. 845; Laws 1959, c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 780, § 9; Laws 1989, LB 781, § 10; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12; Laws 2010, LB861, § 66; Laws 2016, LB1105, § 22; Laws 2018, LB1120, § 15.

**53-133 Retail, bottle club, craft brewery, and microdistillery licenses; hearing; when held; procedure.**

(1) The commission shall set for hearing before it any application for a retail license, bottle club license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail or bottle club establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177 and a written request by the church for a hearing.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed or electronically delivered to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing or electronic delivery to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application. The commission shall not use electronic delivery with respect to an applicant, a protestor, or a church under this section without the consent of the recipient to electronic delivery.

**Source:** Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67; Laws 2011, LB407, § 6; Laws 2015, LB330, § 20; Laws 2018, LB1120, § 16.

**53-134 Retail, bottle club, craft brewery, microdistillery, and entertainment district licenses; city and village governing bodies; county boards; powers, functions, and duties.**

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, bottle club, craft brewery, microdistillery, and entertainment district licenses:

(1) To cancel or revoke for cause retail, craft brewery, microdistillery, or entertainment district licenses to sell or dispense alcoholic liquor or bottle club licenses, issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining



that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, bottle club license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and entertainment district license fees as provided in section 53-123.17 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, bottle club licensee, craft brewery licensee, microdistillery licensee, or entertainment district licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee except as otherwise provided for bottle club licensees in section 53-123.08, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133;

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commis-

sion refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs; and

(8) To review and authorize an application by a retail, bottle club, craft brewery, farm winery, or microdistillery licensee for a temporary expansion of its licensed premises within the jurisdiction of the local governing body to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year, as provided in sections 53-123.12 and 53-129.

**Source:** Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 352, § 92; Laws 1988, LB 550, § 3; Laws 1988, LB 1089, § 15; Laws 1989, LB 780, § 10; Laws 1989, LB 781, § 12; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68; Laws 2011, LB641, § 1; Laws 2012, LB1130, § 7; Laws 2018, LB1120, § 17; Laws 2020, LB1056, § 7.  
Effective date August 16, 2020.

**53-134.01 Class C license holder; limited bottling endorsement; application; fee; conditions of sale.**

(1) The holder of a Class C license may obtain a limited bottling endorsement for such license as prescribed in this section. The endorsement shall be issued for the same period and may be renewed in the same manner as the Class C license. A limited bottling endorsement may not be used in conjunction with a special designated license.

(2) A licensee desiring to obtain a limited bottling endorsement for a license shall file with the commission an application upon such forms as the commission prescribes and a fee of three hundred dollars payable to the commission.

(3) The holder of a limited bottling endorsement may sell beer for consumption off the licensed premises in sealed containers filled as provided in this subsection if:

(a) The sale occurs on the licensed premises of the licensee during the hours the licensee is authorized to sell beer;

(b) The licensee uses sanitary containers purchased by the customer from the licensee or exchanged for containers previously purchased by the customer from the licensee. The containers shall prominently display the endorsement holder's trade name or logo or some other mark that is unique to the endorsement holder and shall hold no more than sixty-four ounces;

(c) The licensee seals the container in a manner designed so that it is visibly apparent whether the sealed container has been tampered with or opened or seals the container and places the container in a bag designed so that it is visibly apparent whether the sealed container has been tampered with or opened; and

(d) The licensee provides a dated receipt to the customer and attaches a copy of the dated receipt to the sealed container or, if the sealed container is placed in a bag, to the bag.

**Source:** Laws 2015, LB330, § 14; Laws 2018, LB1120, § 18.

**53-134.03 Retail, bottle club, craft brewery, and microdistillery licenses; regulation by cities and villages.**

The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, bottle club, craft brewery, or microdistillery licensees carried on within the corporate limits of the city or village.

**Source:** Laws 1935, c. 116, § 104, p. 429; C.S.Supp.,1941, § 53-3,104; R.S.1943, § 53-147; Laws 1980, LB 848, § 11; Laws 1989, LB 781, § 14; R.S.Supp.,1990, § 53-147; Laws 1991, LB 344, § 38; Laws 1993, LB 183, § 16; Laws 1999, LB 267, § 12; Laws 2004, LB 485, § 24; Laws 2007, LB549, § 15; Laws 2018, LB1120, § 19.

**53-134.04 Violations by retail licensee or bottle club licensee; complaints of residents; hearings.**

Any five residents of the city or village shall have the right to file a complaint with the local governing body of such city or village stating that any retail licensee or bottle club licensee subject to the jurisdiction of such local governing body has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the local governing body and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the local governing body is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the local governing body within thirty days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the commission as provided in section 53-1,115.

**Source:** Laws 1935, c. 116, § 88, p. 422; C.S.Supp.,1941, § 53-388; R.S.1943, § 53-1,114; Laws 1980, LB 848, § 21; R.S.1943, (1988), § 53-1,114; Laws 1991, LB 344, § 39; Laws 2004, LB 485, § 25; Laws 2018, LB1120, § 20.

**53-135 Retail or bottle club licenses; automatic renewal; conditions.**

A retail or bottle club license issued by the commission and outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission prior to or within thirty days after the expiration of the license. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commis-

sion may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

**Source:** Laws 1935, c. 116, § 86, p. 421; C.S.Supp.,1941, § 53-386; R.S.1943, § 53-135; Laws 1959, c. 249, § 10, p. 870; Laws 1983, LB 213, § 15; Laws 1984, LB 820, § 1; Laws 1988, LB 1089, § 16; Laws 1991, LB 344, § 40; Laws 2004, LB 485, § 26; Laws 2010, LB861, § 69; Laws 2015, LB330, § 21; Laws 2016, LB1105, § 23; Laws 2018, LB1120, § 21.

**53-135.01 Retail licenses; bottle club licenses; renewal; notice.**

The city, village, or county clerk shall cause to be published in a legal newspaper in or of general circulation in such city, village, or county, one time between January 10 and January 30 of each year, individual notice of the right of automatic renewal of each retail liquor and beer license and each bottle club license, except that notice of the right of automatic renewal of Class C licenses shall be published between the dates of July 10 and July 30 of each year within such city, village, or county, in substantially the following form:

**NOTICE OF RENEWAL OF RETAIL LIQUOR OR BOTTLE CLUB LICENSE**

Notice is hereby given pursuant to section 53-135.01 that a liquor license [or bottle club license] may be automatically renewed for one year from May 1, 20. . . ., or November 1, 20. . . ., for the following retail liquor [or bottle club] licensee:

(Name of Licensee) (Address of licensed premises)

Notice is hereby given that written protests to the issuance of automatic renewal of license may be filed by any resident of the city (village or county) on or before February 10, 20. . . ., or August 10, 20. . . ., in the office of the city (village or county) clerk and that in the event protests are filed by three or more such persons, hearing will be had to determine whether continuation of the license should be allowed.

(Name)

City (village or county) Clerk

Upon the conclusion of any hearing required by this section, the local governing body may request a licensee to submit an application as provided in section 53-135.

**Source:** Laws 1959, c. 249, § 11, p. 870; Laws 1961, c. 260, § 2, p. 779; Laws 1974, LB 681, § 6; Laws 1979, LB 224, § 3; Laws 1983, LB 213, § 16; Laws 1991, LB 344, § 41; Laws 2004, LB 813, § 23; Laws 2018, LB1120, § 22.

**53-136 Cigar shops; legislative findings; legislative intent.**

(1) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction

on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(2) The Legislature finds that (a) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (b) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (c) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(3) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(4) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

**Source:** Laws 2015, LB118, § 5.

**Cross References**

Nebraska Clean Indoor Air Act, see section 71-5716.

**53-137 Cigar shop license; prohibited acts; sign required; waiver signed by employee; form.**

(1) The holder of a cigar shop license shall not allow a person under twenty-one years of age to smoke or purchase any product in the cigar shop.

(2) The licensee shall post a sign on all entrances to the cigar shop, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: **SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.**

(3) Beginning November 1, 2015, the licensee shall provide to the commission a copy of a waiver signed prior to employment by each employee on a form prescribed by the commission. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

**Source:** Laws 2015, LB118, § 6.

**53-138 Pedal-pub vehicle license; activities authorized; licensee; duties.**

(1) The commission may issue a license to a person to operate a pedal-pub vehicle in this state. Each pedal-pub vehicle license shall expire on April 30 of each year. Each license shall be good throughout this state as a state license. Only one license shall be required for all pedal-pub vehicles operated in this state by the same owner. Each owner shall keep a duplicate of such license posted in each pedal-pub vehicle where alcoholic liquor is sold or consumed. No further license shall be required or tax levied by any county, city, or village for the privilege of operating a pedal-pub vehicle for the purpose of selling and allowing the consumption of alcoholic liquor while on or in a pedal-pub vehicle.

(2) The holder of a pedal-pub vehicle license may sell alcoholic liquor in individual drinks to customers who are twenty-one years of age or older to consume while they are on or in the pedal-pub vehicle and may allow such customers to consume alcoholic liquor not purchased from the licensee while the customers are on or in the pedal-pub vehicle. The licensee shall serve alcoholic liquor in opaque plastic containers that prominently display the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's pedal-pub vehicle license and shall require the use of such containers for the consumption of alcoholic liquor not purchased from the licensee.

(3) No customer shall take any open container of alcoholic liquor from the pedal-pub vehicle or consume the alcoholic liquor after leaving the pedal-pub vehicle. A customer may take unopened containers of alcoholic liquor not purchased from the licensee from the pedal-pub vehicle.

(4) The licensee shall not allow open containers of alcoholic liquor to leave the pedal-pub vehicle. The licensee shall be responsible for picking up and disposing of any litter or other waste or any personal property that originates from the pedal-pub vehicle and lands on public or private property.

**Source:** Laws 2015, LB330, § 15.

**53-138.01 Licenses; disposition of fees.**

The State Treasurer shall credit three hundred ninety-five dollars of each four-hundred-dollar application fee and forty dollars of each forty-five-dollar application fee and each renewal fee to the General Fund and the remaining five dollars to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund to be used for providing licensees with materials pursuant to section 53-117.05. All retail and bottle club license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly or partially within the corporate limits of such city or village. Except as otherwise provided in section 53-123.15, the State Treasurer shall distribute license fees received by the commission for licenses issued pertaining to

alcoholic liquor, including beer, in accordance with Article VII, section 5, of the Constitution of Nebraska. All retail and bottle club license fees received by the county treasurer, as provided in section 53-124, shall be credited to the school fund of the county.

**Source:** Laws 1935, c. 116, § 92, p. 424; C.S.Supp.,1941, § 53-392; R.S.1943, § 53-138; Laws 1949, c. 169, § 2(2), p. 448; Laws 1953, c. 180, § 2, p. 570; Laws 1959, c. 249, § 12, p. 872; Laws 1988, LB 1089, § 17; Laws 1991, LB 202, § 5; Laws 1997, LB 345, § 1; Laws 2000, LB 973, § 7; Laws 2010, LB861, § 70; Laws 2010, LB867, § 3; Laws 2018, LB1120, § 23.

**53-148.01 Retail or bottle club licensee; warning sign; commission; duties.**

Any retail or bottle club licensee shall post in a conspicuous place a sign which clearly reads as follows: Warning: Drinking alcoholic beverages during pregnancy can cause birth defects. The commission shall prescribe the form of such warning sign and shall make such warning signs available to all retail and bottle club licensees.

**Source:** Laws 1989, LB 70, § 2; R.S.Supp.,1990, § 53-101.04; Laws 1991, LB 344, § 43; Laws 2018, LB1120, § 24.

(f) TAX

**53-160 Tax on manufacturer and wholesaler; amount; exemption; duties of commission.**

(1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of thirty-one cents per gallon on all beer; ninety-five cents per gallon for wine, except for wines produced and released from bond in farm wineries; six cents per gallon for wine produced and released from bond in farm wineries; and three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The net proceeds of all revenue arising under this section shall be credited to the General Fund.

**Source:** Laws 1935, c. 116, § 50, p. 405; Laws 1939, c. 66, § 1, p. 273; Laws 1941, c. 106, § 1, p. 426; C.S.Supp., 1941, § 53-350; R.S. 1943, § 53-160; Laws 1947, c. 189, § 1, p. 624; Laws 1951, c. 172, § 1, p. 660; Laws 1963, c. 312, § 1, p. 940; Laws 1965, c. 320, § 1, p. 911; Laws 1965, c. 319, § 3, p. 909; Laws 1965, c. 318, § 9, p. 898; Laws 1972, LB 66, § 3; Laws 1977, LB 254, § 1; Laws 1977, LB 220, § 1; Laws 1979, LB 260, § 1; Laws 1981, LB 129, § 1; Laws 1985, LB 279, § 9; Laws 1985, LB 280, § 1; Laws 1988, LB 901, § 3; Laws 1988, LB 1089, § 22; Laws 1991, LB 344, § 44; Laws 2003, LB 283, § 1; Laws 2003, LB 759, § 1; Laws 2012, LB824, § 6.

**53-160.03 Beer-related crop; tax credit; calculation; application; contents; approval; notice.**

(1) The Legislature finds that encouraging manufacturers of beer to use beer-related crops grown in this state in their manufacturing operations stimulates the creation of jobs and investments in small communities in this state, encourages the use of lands upon which beer-related crops may be grown, and provides tax revenue to the state which would not otherwise be realized. It is the intent of the Legislature to encourage the use of such beer-related crops by providing a nonrefundable tax credit as provided in this section.

(2) For purposes of this section, beer-related crop means barley or hops.

(3) A nonrefundable credit against the tax imposed in section 53-160 shall be allowed to any manufacturer of beer if at least ten percent of the beer-related crops used by such manufacturer in the previous calendar year were grown in this state. The credit shall be an amount equal to the percentage specified in subsection (4) of this section multiplied by the total amount of tax paid under section 53-160 in the previous calendar year on the first twenty thousand barrels of beer sold by such manufacturer.

(4) The percentage used to determine the credit shall be as follows:

(a) If at least ten percent but less than forty percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be fifteen percent;



(b) If at least forty percent but less than seventy percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be twenty-five percent; and

(c) If at least seventy percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be thirty-five percent.

(5) A manufacturer of beer shall apply for the credit to the commission on a form prescribed by the commission. The application shall be submitted on or before January 25 of each year and shall contain the following information:

(a) The name of the manufacturer;

(b) The total number of barrels of beer sold and the total amount of tax paid under section 53-160 during the previous calendar year;

(c) The percentage of beer-related crops used by the manufacturer in the previous calendar year that were grown in this state; and

(d) Such other information as required by the commission to verify that the manufacturer is qualified to receive the credit allowed under this section and to calculate the amount of the credit.

(6) If the manufacturer of beer qualifies for the credit, the commission shall approve the application and notify the manufacturer of the amount of the credit approved. The manufacturer may then claim the credit on the reports due each month under section 53-164.01 as an offset against the taxes due pursuant to such reports until the credit is fully utilized or until the following December 31, whichever occurs first.

**Source:** Laws 2015, LB330, § 22.

### **53-162 Alcoholic liquor shipped from another state; tax imposed.**

For the purpose of raising revenue, a tax is imposed upon persons holding a shipping license issued pursuant to subsection (4) or (5) of section 53-123.15 who ship alcoholic liquor to individuals pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the holder of the shipping license issued pursuant to subsection (4) or (5) of section 53-123.15. The amount of the tax shall be imposed as provided in section 53-160. The tax shall be collected by the commission, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The commission shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2000, LB 973, § 2; Laws 2001, LB 671, § 3; Laws 2013, LB230, § 4.

### **53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.**

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of

each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c)(i) Except as provided in subdivision (ii) of this subdivision, farm winery producers which paid less than one thousand dollars of excise taxes pursuant to section 53-160 for the previous calendar year and which will pay less than one thousand dollars of excise taxes pursuant to section 53-160 for the current calendar year shall, on or before the twenty-fifth day of the calendar month following the end of the year in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar year; and

(ii) Farm winery producers which paid one thousand dollars or more of excise taxes pursuant to section 53-160 for the previous calendar year or which become liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar month. A farm winery producer which becomes liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall also pay such excise taxes immediately;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was released from bond for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was released from bond for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer,

shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under sections 53-124 and 53-124.01, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

**Source:** Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws

1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16; Laws 2010, LB861, § 73; Laws 2012, LB824, § 7.

(h) KEG SALES

**53-167.02 Keg sales; requirements; keg identification number; violation; penalty.**

(1) When any person licensed to sell alcoholic liquor at retail sells alcohol for consumption off the premises in a container with a liquid capacity of five or more gallons or eighteen and ninety-two hundredths or more liters, the seller shall record the date of the sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months.

(2) The commission shall adopt and promulgate rules and regulations which require the licensee to place a label on the alcohol container, which label shall at least contain a keg identification number and shall be on a form prescribed by the commission. Such label shall be placed on the keg at the time of retail sale. The licensee shall purchase the forms referred to in this section from the commission. The cost incurred to produce and distribute such forms shall be reasonable and shall not exceed the reasonable and necessary costs of producing and distributing the forms. Any money collected by the commission relating to the sale of such forms shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) The keg identification number for each container shall be registered with the commission. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at any other reasonable time. Any person violating this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1993, LB 332, § 3; Laws 2015, LB330, § 23.

**53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit.**

(1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a container described in section 53-167.02 or is in possession of a container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing alcohol for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully

tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

**Source:** Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10; Laws 2015, LB330, § 24.

(i) PROHIBITED ACTS

**53-168.06 General prohibition; exceptions.**

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in the Nebraska Liquor Control Act. Nothing in the act shall prevent:

(1) The possession of alcoholic liquor legally obtained as provided in the act for the personal use of the possessor and his or her family and guests;

(2) The making, transport, and delivery of wine, cider, beer, mead, perry, or other alcoholic liquor by a person from fruits, vegetables, honey, or grains, or the product thereof, by simple fermentation and without distillation, (a) if made solely for the use of the maker and his or her family and guests if such alcoholic liquor is not sold or offered for sale, or (b) if made without a permit for an exhibition, festival, or tasting competition, including exhibitions, festivals, or tasting competitions that are for nonprofit organizations such as fundraising events, legally conducted under the act, if such alcoholic liquor is not sold or offered for sale. Alcoholic liquor served pursuant to this subdivision (b) shall clearly be identified as alcoholic liquor that was manufactured under an exception to the rules and regulations of the commission by signage, and the location of the manufacturer shall be available upon request. Free or reduced admission to the exhibition, festival, or tasting competition shall not be considered a sale of the alcoholic liquor;

(3) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians;

(4) The possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony;

(5) Persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor;

(6) Persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment;

(7) Persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment;

(8) Persons who are sixteen years old or older from completing a transaction for the sale of alcoholic liquor in the course of their employment if they are not handling or serving alcoholic liquor; or

(9) Persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment.

**Source:** Laws 1935, c. 116, § 1, p. 374; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-102; Laws 1971, LB 666, § 1; Laws 1978, LB 386, § 2; Laws 1980, LB 221, § 1; Laws 1985, LB 359, § 1; R.S.1943, (1988), § 53-102; Laws 1991, LB 344, § 52; Laws 1995, LB 874, § 2; Laws 2001, LB 114, § 3; Laws 2016, LB1105, § 24; Laws 2019, LB235, § 1.

**53-169 Manufacturer or wholesaler; craft brewery, manufacturer, or micro-distillery licensee; limitations.**

(1) Except as provided in subsection (2) of this section, no manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section does not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 and the holder of a manufacturer's license shall have the privileges and duties listed in section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license or of a manufacturer's license issued pursuant to section 53-123.01 to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 183, § 5; Laws 1985, LB 279, § 11; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17; Laws 2016, LB1105, § 25.

**53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exception.**

(1)(a) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the owner-

ship, conduct, operation, or management of any wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03.

(b) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of a wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

(2) A manufacturer of beer may acquire an ownership interest in a beer wholesaler, for a period not to exceed two years, upon the death or bankruptcy of the beer wholesaler with which the manufacturer is doing business or upon the beer wholesaler with which the manufacturer is doing business becoming ineligible to hold a license under section 53-125.

**Source:** Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74; Laws 2011, LB279, § 1.

**53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery, manufacturer, or microdistillery licensee; limitations.**

No person licensed as a wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a manufacturer shall be permitted to receive any retail license at the same time except as set forth in subsection (2) of section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a manufacturer's license issued pursuant to such subsection to engage in the wholesale distribution of alcoholic liquor. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969,

c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18; Laws 2016, LB1105, § 26.

**53-173 Powdered alcohol; prohibited acts; penalties; effect on license.**

(1) Except as otherwise provided in subsection (5) of this section, a person shall not purchase, sell, offer to sell, use, or possess with intent to sell powdered alcohol.

(2) A person holding a license under the Nebraska Liquor Control Act shall be subject to having the license suspended, canceled, or revoked pursuant to the act for a violation of this section.

(3) Any person, other than a person licensed under the act, who sells a powdered alcohol product shall be guilty of a Class I misdemeanor.

(4) Any person knowingly or intentionally possessing powdered alcohol shall:

(a) For the first offense, be guilty of an infraction, receive a citation, and be fined three hundred dollars;

(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.

(5) This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

**Source:** Laws 2015, LB330, § 8.

**53-175 Liquor; acquisition from other than licensed dealer; when unlawful.**

It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. No licensed retailer of alcoholic liquor shall purchase such liquor other than from a licensed wholesaler who has his or her place of business within this state. Nothing in this section shall prohibit the sale or exchange among collectors of commemorative bottles or uniquely designed decanters which contain alcoholic liquor.

**Source:** Laws 1935, c. 116, § 32, p. 398; C.S.Supp.,1941, § 53-332; R.S.1943, § 53-175; Laws 1988, LB 1089, § 27; Laws 1989, LB 154, § 4; Laws 1991, LB 344, § 58; Laws 2016, LB1105, § 27.

**53-177 Sale at retail; bottle club license; restrictions as to locality.**

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor or for a bottle club within one hundred fifty feet of any church, school, hospital, or home for indigent persons or for veterans and their wives or children. This prohibition



does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail or for a bottle club has been granted by the commission for two years continuously prior to making of application for license, (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935, or (c) to a college or university in the state which is subject to section 53-177.01.

(2) If a proposed location for the sale at retail of any alcoholic liquor or for a bottle club is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133 if the affected church submits a written request for a hearing.

**Source:** Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3; Laws 2010, LB861, § 76; Laws 2011, LB407, § 7; Laws 2015, LB330, § 25; Laws 2018, LB1120, § 25.

**53-177.01 Sale for consumption on premises or bottle club operation near campus of college or university; restrictions; commission; waiver; application; contents; written approval of governing body of college or university.**

(1) No alcoholic liquor shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

(2) Except as otherwise provided in subsection (4) of this section, the commission may waive the three-hundred-foot restriction in subsection (1) of this section taking into consideration one or more of the following:

(a) The impact of retail sales of alcoholic liquor for consumption on the premises on the academic mission of the college or university;

(b) The impact on students and prospective students if such sales were permitted on or near campus;

(c) The impact on economic development opportunities located within or in proximity to the campus; and

(d) The waiver would likely reduce the number of applications for special designated licenses requested by the college or university or its designee.

(3) To apply for a waiver under this section, the applicant shall submit a written application to the commission. The commission shall notify the governing body of the affected college or university when the commission receives an application for a waiver. The application shall include:

(a) The address of the location for which the waiver is requested;

(b) The name and type of business for which the waiver is requested; and

(c) A description of the justification for the waiver explaining how the proposed location complies with the findings prescribed in subsection (2) of this section.

(4) The commission shall not waive the three-hundred-foot restriction in subsection (1) of this section without written approval from the governing body of the college or university or its designee if the physical location of the property which is the subject of the requested waiver is (a) surrounded by property owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university or (b) adjacent to property on two or more sides owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university.

(5) No bottle club shall be operated within three hundred feet from the campus of any college or university in the state.

**Source:** Laws 2011, LB407, § 8; Laws 2018, LB1120, § 26.

**53-178 Sale at retail; forbidden in dwelling or lodging house; exceptions.**

Except in the case of hotels and clubs, no alcoholic liquor shall be manufactured or sold at retail or wholesale upon any premises which have any access which leads from such premises to any other portion of the same building or structure used for dwelling or lodging purposes and permitted to be used or kept accessible for use by the public. This section does not prevent any connection between such premises and such other portion of the building or structure which is used only by the licensee or his or her family and personal guests.

**Source:** Laws 1935, c. 116, § 36, p. 399; C.S.Supp.,1941, § 53-336; R.S.1943, § 53-178; Laws 2016, LB1105, § 28.

**53-179 Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.**

(1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day, (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day, (c) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day, or (d) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, and permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

**Source:** Laws 1935, c. 116, § 37, p. 399; Laws 1941, c. 107, § 1, p. 429; C.S.Supp.,1941, § 53-337; R.S.1943, § 53-179; Laws 1955, c. 202, § 2, p. 579; Laws 1957, c. 232, § 1, p. 791; Laws 1963, c. 310, § 12, p. 934; Laws 1963, Spec. Sess., c. 5, § 4, p. 82; Laws 1965, c. 318, § 10, p. 900; Laws 1967, c. 336, § 2, p. 902; Laws 1974, LB 681, § 7; Laws 1976, LB 204, § 6; Laws 1978, LB 386, § 8; Laws 1979, LB 514, § 1; Laws 1981, LB 217, § 1; Laws 1983, LB 213, § 19; Laws 1991, LB 344, § 61; Laws 1991, LB 354, § 1; Laws 2004, LB 485, § 29; Laws 2010, LB861, § 77; Laws 2012, LB861, § 1; Laws 2014, LB863, § 24.

#### **53-180 Prohibited acts relating to minors and incompetents.**

No person shall sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of, any alcoholic liquors to or for any minor or to any person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(1), p. 664; Laws 1980, LB 848, § 17; Laws 2011, LB667, § 21.

#### **Cross References**

Minor Alcoholic Liquor Liability Act, see section 53-401.

#### **53-180.05 Prohibited acts relating to minors and incompetents; violations; penalties; possible alcohol overdose; actions authorized; false identification; penalty; law enforcement agency; duties.**

(1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired

condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4)(a) Except as otherwise provided in subdivisions (b), (c), and (d) of this subsection, any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(b) Subdivision (a) of this subsection shall not apply if the person:

(i) Made a good faith request for emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(ii) Made the request for medical assistance under subdivision (b)(i) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(iii) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(A) Remained on the scene until the medical assistance arrived; and

(B) Cooperated with medical assistance and law enforcement personnel.

(c) The exception from criminal liability provided in subdivision (b) of this subsection applies to any person who makes a request for emergency medical assistance and complies with the requirements of subdivision (b) of this subsection.

(d) Subdivision (a) of this subsection shall not apply to the person experiencing a possible alcohol overdose if a request for emergency medical assistance in response to such possible alcohol overdose was made by another person in compliance with subdivision (b) of this subsection.

(e) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subdivision (b), (c), or (d) of this subsection.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

**Source:** Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp., 1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws

1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2; Laws 2011, LB667, § 22; Laws 2015, LB439, § 1; Laws 2018, LB923, § 2.

**53-180.06 Documentary proof of age; separate book; record; contents.**

(1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

**Source:** Laws 1969, c. 437, § 1, p. 1467; Laws 1991, LB 454, § 2; Laws 1999, LB 267, § 14; Laws 2013, LB173, § 1.

**53-181 Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles; possible alcohol overdose; actions authorized.**

(1) Except as otherwise provided in subsections (3), (4), and (5) of this section, the penalty for violation of section 53-180.02 by a person eighteen years of age or younger shall be as follows:

(a) If the person convicted or adjudicated of violating such section has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, such person is guilty of a Class III misdemeanor and the court may, as a part of the judgment of conviction or adjudication, impound any such licenses or permits for thirty days and require such person to attend an alcohol education class;

(ii) For a second offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (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 an alcohol education class; and

(iii) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (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 an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating such section does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (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 an alcohol education class;

(ii) For a second offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (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 an alcohol education class; and

(iii) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (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 an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

(2) 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.

(3) Subsection (1) of this section shall not apply if the person:

(a) Made a good faith request for emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(b) Made the request for medical assistance under subdivision (a) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(c) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(i) Remained on the scene until the medical assistance arrived; and

(ii) Cooperated with medical assistance and law enforcement personnel.

(4) The exception from criminal liability provided in subsection (3) of this section applies to any person who makes a request for emergency medical assistance and complies with the requirements of subsection (3) of this section.

(5) Subsection (1) of this section shall not apply to the person experiencing a possible alcohol overdose if a request for emergency medical assistance in response to such possible alcohol overdose was made by another person in compliance with subsection (3) of this section.

(6) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subsection (3), (4), or (5) of this section.

**Source:** Laws 2010, LB258, § 3; Laws 2015, LB439, § 2; Laws 2018, LB923, § 3.

**Cross References**

Motor Vehicle Operator's License Act, see section 60-462.

**53-183 Sale on credit or for goods or services forbidden; exceptions.**

(1) No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person

extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(2) Nothing in this section shall prevent:

(a) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(b) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(c) Any licensed retailer engaged in the sale of wine or distilled spirits from issuing tasting cards to customers.

**Source:** Laws 1935, c. 116, § 40, p. 401; C.S.Supp.,1941, § 53-340; R.S.1943, § 53-183; Laws 1959, c. 252, § 1, p. 883; Laws 1978, LB 386, § 10; Laws 1991, LB 344, § 64; Laws 2011, LB314, § 1; Laws 2014, LB863, § 25.

**53-186 Consumption of liquor on public property; forbidden; exceptions; license authorized.**

(1) Except as provided in subsection (2) of this section or section 60-6,211.08, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1; Laws 2011, LB281, § 1.

**53-186.01 Consumption of liquor in public places; license required; exceptions; violations; penalty.**

(1) It shall be unlawful for any person owning, operating, managing, or conducting any bottle club, dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any bottle club, dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under section 60-6,211.08.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

(5) Any person violating subsection (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1965, c. 318, § 1, p. 885; Laws 1978, LB 386, § 11; Laws 1991, LB 344, § 67; Laws 1991, LB 454, § 3; Laws 2011, LB281, § 2; Laws 2018, LB1120, § 27.

**53-187 Nonbeverage licensee forbidden to give or sell alcoholic liquor; violation; penalty.**

No nonbeverage user shall sell, give away, or otherwise dispose of any alcoholic liquor, purchased under his or her license as such nonbeverage user, in any form fit for beverage purposes. Any nonbeverage user who violates this section shall pay to the commission, for the use of the General Fund, the sum of three dollars and seventy-five cents for each gallon of alcoholic liquor so diverted, and in addition thereto shall be subject to the penalties provided in section 53-1,100.

**Source:** Laws 1935, c. 116, § 57, p. 408; Laws 1939, c. 64, § 2, p. 271; C.S.Supp.,1941, § 53-357; R.S.1943, § 53-187; Laws 1959, c. 250, § 3, p. 877; Laws 1965, c. 319, § 4, p. 910; Laws 2016, LB1105, § 29.

**53-188 Repealed. Laws 2014, LB 863, § 31.**

**53-189 Repealed. Laws 2014, LB 863, § 31.**

**53-190 Premises violating law declared common nuisances.**

All places where alcoholic liquor is sold or consumed in violation of any provision of section 53-186.01 shall be taken and held and are declared to be common nuisances and may be abated as such in the manner provided in the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 61, p. 409; C.S.Supp.,1941, § 53-361; R.S.1943, § 53-190; Laws 1965, c. 318, § 11, p. 901; Laws 2014, LB863, § 26.

**53-191 Repealed. Laws 2014, LB 863, § 31.**

**53-194.03 Transportation of liquor into state; forbidden; when; penalty.**

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into the State of Nebraska for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of nine liters in any one calendar month.

(2) Subsection (1) of this section does not apply to a person importing alcoholic liquor from a holder of a retail direct sales shipping license or its equivalent, which alcoholic liquor is for personal use or for use by such



person's family or guests, if the total amount imported by such person in any one calendar year does not exceed one hundred eight liters.

(3) Alcoholic liquor transported, imported, brought, or shipped into the State of Nebraska in violation of this section shall be seized by the commission and disposed of in the manner provided for contraband. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1985, LB 359, § 4; Laws 1994, LB 1292, § 9; Laws 2016, LB1105, § 30.

**53-197 Violations; peace officer; duties; neglect of duty; penalty.**

(1) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court, and for every neglect or refusal so to do, every such officer shall be guilty of a Class V misdemeanor.

(2) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the executive director of the commission (a) within thirty days after such offense is committed, (b) within thirty days after such sheriff, deputy sheriff, police officer, marshal, or deputy marshal is informed of such offense, (c) within thirty days after the conclusion of an ongoing police investigation, or (d) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

**Source:** Laws 1935, c. 116, § 75, p. 412; C.S.Supp.,1941, § 53-375; R.S.1943, § 53-197; Laws 1972, LB 1032, § 257; Laws 1977, LB 40, § 318; Laws 1988, LB 1030, § 44; Laws 2011, LB641, § 2.

(j) PENALTIES

**53-1,100 Violations; general penalties.**

(1) Any person (a) who imports alcoholic liquor for distribution as a wholesaler or distributes or sells alcoholic liquor at any place within the state without having first obtained a valid license to do so under the Nebraska Liquor Control Act, (b) who manufactures alcoholic liquor other than spirits within the state without having first obtained a valid license to do so under the act, (c) who makes any false statement or otherwise violates any of the provisions of the act in obtaining any license under the act, (d) who, having obtained a license under the act, violates any of the provisions of the act with respect to the manufacture, possession, distribution, or sale of alcoholic liquor or with respect to the maintenance of the licensed premises, or (e) who violates any other provision of the act for which a penalty is not otherwise provided, shall for a first offense be guilty of a Class IV misdemeanor and for a second or subsequent offense shall be guilty of a Class II misdemeanor.

(2) Any person who manufactures spirits at any place within the state without having first obtained a valid license to do so under the act shall be guilty of a

Class I misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Each day any person engages in business as a manufacturer, wholesaler, retailer, or bottle club in violation of the act shall constitute a separate offense.

(4) In any prosecution in which a person is charged with an offense arising out of the failure to obtain a valid license as provided in subdivision (1)(a) or (b) or subsection (2) of this section, evidence of the failure of the accused to produce such license upon demand shall constitute prima facie proof that a license has not been issued by the commission to such person.

**Source:** Laws 1935, c. 116, § 63, p. 409; C.S.Supp.,1941, § 53-363; R.S.1943, § 53-1,100; Laws 1945, c. 128, § 1, p. 411; Laws 1949, c. 170, § 1, p. 450; Laws 1977, LB 40, § 319; Laws 1991, LB 344, § 70; Laws 2016, LB1105, § 31; Laws 2018, LB1120, § 28.

**53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.**

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspen-

sion for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) Recognizing that suspension of the license of a licensee domiciled outside of the state poses unique enforcement difficulties, the commission may, at its discretion, mandate that a licensee domiciled outside of the state pay the cash penalty found in subsection (2) of this section rather than serve the suspension.

**Source:** Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2; Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78; Laws 2011, LB311, § 1.

#### (k) PROSECUTION AND ENFORCEMENT

##### **53-1,111 Search warrants; search and seizure of property; sale; disposition of proceeds; arrests.**

Upon the issuance of any search warrant pursuant to section 53-1,108, it shall be the duty of the officers executing the same to enter the house, building, premises, boat, vehicle, receptacle, or other place described, either in the daytime or nighttime, by force if necessary and to remove and confiscate any alcoholic liquor manufactured, possessed, or kept for sale contrary to the terms of the Nebraska Liquor Control Act and any machinery, equipment, or material used in connection therewith and to hold such property until all prosecution arising out of such search and seizure shall have ended and determined. It shall be the duty of the officers executing such search warrant to arrest any person or persons found using or in possession or control of such alcoholic liquor, articles, or things. All alcoholic liquor unlawfully manufactured, stored, kept,

sold, or otherwise disposed of, and the containers thereof, and all equipment used or fit for use in the manufacture or production of the same which are found at or about any still or outfit for the unlawful manufacture of alcoholic liquor on unlicensed premises are hereby declared contraband, and no right of property shall be or exist in any person owning, furnishing, or possessing any such property, liquor, material, or equipment, but all such property, articles, and things, including alcoholic liquor, shall be sold upon an order of the court as provided in section 53-1,113, and the proceeds thereof shall be disposed of in the manner provided for the disposition of license money under the Constitution of Nebraska.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,111; Laws 1994, LB 859, § 18; Laws 2015, LB330, § 26.

**53-1,113 Search warrant; sale of property seized; procedure; destruction, when required.**

(1) It shall be the duty of the officer who has seized and is holding any of the property mentioned in section 53-1,111 to make application to the court on final determination of any prosecution arising under such search and seizure, and in which such prosecution has been commenced or prosecuted, for an order to sell such property. The court, if satisfied that the property so seized and held was at the time of its seizure being kept or used, or was fit for use in the unlawful manufacture or production of alcoholic liquor, shall make an order that (a) the commission dispose of any alcoholic liquor in accordance with the Nebraska Liquor Control Act and (b) any other property and effects be sold by such officer subject to the time, place, manner, and notice of such sale set by the order.

(2) Nothing contained in the Nebraska Liquor Control Act shall be considered to authorize the sale of any alcoholic liquor unlawfully manufactured fit for human consumption which comes into the possession of any officer or the commission by seizure, confiscation, or forfeiture under the provisions of the act without the payment of all taxes and inspection fees required by the laws of this state and of the United States, and all such unlawfully manufactured alcoholic liquor which is unfit for human consumption shall be destroyed.

(3) The commission shall destroy alcoholic liquor which is unfit for human consumption and may sell alcoholic liquor, when directed by order of the court, at the time, place, and manner the commission determines to be in the public interest and subject to the taxes and inspection fees required by the laws of this state and of the United States.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,113; Laws 1994, LB 859, § 19; Laws 2015, LB330, § 27.

**53-1,115 Proceedings before commission; service upon parties; rehearings; costs.**

(1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall

be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for such service. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service upon such party.

(2) Within thirty days after the service of any rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as provided in section 53-1,116.

(3) Upon final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing referred to in subsection (2) of this section shall be granted by the commission on application of any one party.

(4) For purposes of this section, party of record means:

(a) In the case of an administrative proceeding before the commission on the application for a retail, bottle club, craft brewery, or microdistillery license:

(i) The applicant;

(ii) Each individual protesting the issuance of such license pursuant to subdivision (1)(b) of section 53-133;

(iii) The local governing body if it is entering an appearance to protest the issuance of the license or if it is requesting a hearing pursuant to subdivision (1)(c) of section 53-133; and

(iv) The commission;

(b) In the case of an administrative proceeding before a local governing body to cancel or revoke a retail, bottle club, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The local governing body; and

(c) In the case of an administrative proceeding before the commission to suspend, cancel, or revoke a retail, bottle club, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The commission.

**Source:** Laws 1989, LB 781, § 15; Laws 1993, LB 183, § 17; Laws 1999, LB 267, § 16; Laws 2004, LB 485, § 30; Laws 2007, LB549, § 20; Laws 2018, LB1120, § 29.

**53-1,120.01 County resolution or city ordinance prohibiting smoking; not applicable to cigar shops.**

No county resolution or city ordinance that prohibits smoking in indoor areas shall apply to cigar shops.

**Source:** Laws 2009, LB355, § 5; Laws 2015, LB118, § 7.

**53-1,121 Law enforcement officer; intoxicated person; removal; civil protective custody; procedure; Department of Health and Human Services; limit on licensure actions.**

(1) City police, county sheriffs, officers of the Nebraska State Patrol, and any other such law enforcement officer with power to arrest for traffic violations may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property. An officer removing an intoxicated person from public or quasi-public property shall make a reasonable effort to take such intoxicated person to his or her home or to place such person in any hospital, clinic, or mental health substance use treatment center or with a medical doctor as may be necessary to preserve life or to prevent injury. Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors which have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals. If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, except that civil protective custody shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstances for longer than twenty-four hours.

(2) The placement of such person in civil protective custody shall be recorded at the facility or jail to which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

(3) The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions.

(4) The taking of an individual into civil protective custody under this section shall not be considered an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(5) The Department of Health and Human Services shall not deny issuance or renewal of a license under the Health Care Facility Licensure Act to a mental health substance use treatment center on the basis that the mental health substance use treatment center utilizes locked rooms to provide civil protective custody services if the mental health substance use treatment center is otherwise in compliance with the applicable rules and regulations of the department and if a person placed into civil protective custody in the mental health substance use treatment center is not kept in a locked room after such person is no longer a danger to himself or herself or other patients or staff of the mental health substance use treatment center.

(6) For purposes of this section:

(a) Mental health substance use treatment center has the same meaning as in section 71-423;

(b) Public property means any public right-of-way, street, highway, alley, park, or other state, county, or municipally owned property; and

(c) Quasi-public property means and includes private or publicly owned property utilized for proprietary or business uses which invites patronage by the public or which invites public ingress and egress.

**Source:** Laws 1979, LB 376, § 2; Laws 1981, LB 87, § 1; Laws 2019, LB200, § 1.

**Cross References**

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

**ARTICLE 3**

**NEBRASKA GRAPE AND WINERY BOARD**

**Section**

53-302. Board; officers; terms; expenses.

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

**53-302 Board; officers; terms; expenses.**

(1) Within thirty days after the appointment of the initial members of the Nebraska Grape and Winery Board, such board shall conduct its first regular meeting. During that meeting, the board members shall elect from among themselves, by majority vote, a chairperson, vice-chairperson, secretary, and treasurer, all to serve for terms of one year from the date of election. Subsequent board meetings shall take place at least once every six months and at such times as called by the chairperson or by any three board members.

(2) Each board member shall serve for a term of three years, except that at the expiration of the terms of the members in 2021, the Governor shall appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years, and their successors shall be appointed for a term of three years. Upon completion of a term, a member may, at the Governor's discretion, be reappointed.

(3) All voting board members shall be reimbursed for expenses as provided for in sections 81-1174 to 81-1177 while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

(4) A board member shall be removable by the Governor for cause. The board member shall first be given a written copy of the charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, the failure of a board member to continue to meet any of the requirements for eligibility set out in section 53-301 shall be deemed sufficient cause for removal from office.

**Source:** Laws 2000, LB 477, § 2; Laws 2019, LB75, § 1; Laws 2020, LB381, § 46.

Operative date January 1, 2021.

**53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.**

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the

Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. 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 2000, LB 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7; Laws 2013, LB230, § 5.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 5**

**NEBRASKA CRAFT BREWERY BOARD**

**Section**

- 53-501. Nebraska Craft Brewery Board; created; members; qualifications; vacancy.
- 53-502. Nebraska Craft Brewery Board; meetings; members; terms; expenses; removal; procedure.
- 53-503. Nebraska Craft Brewery Board; powers and duties.
- 53-504. Nebraska Beer Industry Promotional Fund; created; use; investment; holder of craft brewery license; annual fee; use.
- 53-505. Nebraska Craft Brewery Board; annual report; contents; fee.

**53-501 Nebraska Craft Brewery Board; created; members; qualifications; vacancy.**

(1) The Nebraska Craft Brewery Board is created. All board members shall be (a) citizens of Nebraska, (b) at least twenty-one years of age, and (c) either engaged in or previously engaged in the manufacture or the wholesale or retail sale of beer in this state or engaged or previously engaged in the production in this state of agricultural products that are utilized in the brewing process. The



board shall consist of seven members to be appointed by the Governor on a nonpartisan basis. At least two board members shall be selected by the Governor from a list of no fewer than ten candidates submitted by the Nebraska Craft Brewers Guild or its successor organization. In addition, at least two board members shall be selected by the Governor from a list of no fewer than ten candidates submitted by the Associated Beverage Distributors of Nebraska or its successor organization. The Director of Agriculture or his or her designee and the executive director of the Nebraska Tourism Commission or his or her designee shall be nonvoting, ex officio members of the board.

(2) Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy pursuant to the qualifications set forth in subsection (1) of this section.

**Source:** Laws 2016, LB1105, § 1.

**53-502 Nebraska Craft Brewery Board; meetings; members; terms; expenses; removal; procedure.**

(1) Within thirty days after the appointment of the initial members of the Nebraska Craft Brewery Board, such board shall conduct its first regular meeting. During that meeting, the board members shall elect from among themselves, by majority vote, a chairperson, vice-chairperson, secretary, and treasurer, all to serve for terms of one year from the date of election. Subsequent board meetings shall take place at least once every six months and at such times as called by the chairperson or by any three board members.

(2) Each member shall serve for a term of three years, except that at the expiration of the terms of the members in 2022, the Governor shall appoint two members for a term of one year, two members for a term of two years, and three members for a term of three years, and their successors shall be appointed for a term of three years. Upon completion of a term, a member may, at the Governor's discretion, be reappointed.

(3) All voting members of the board shall be reimbursed for expenses incurred while engaged in the performance of official responsibilities as members of such board pursuant to sections 81-1174 to 81-1177.

(4) A member may be removed by the Governor for cause. The member shall first be given a written copy of the charges against him or her and also an opportunity to be heard publicly. If a member moves out of Nebraska, that shall be deemed sufficient cause for removal from office.

**Source:** Laws 2016, LB1105, § 2; Laws 2019, LB624, § 1; Laws 2020, LB381, § 47.

Operative date January 1, 2021.

**53-503 Nebraska Craft Brewery Board; powers and duties.**

The Nebraska Craft Brewery Board has the following powers and duties:

(1) Establish a public forum to provide any manufacturer of beer or producer of agricultural products used in the brewing process the opportunity, at least once annually, to discuss with the board its policies and procedures;

(2) Keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to make these records available for examination upon request by members of the public;

(3) Authorize and approve the expenditure of funds collected pursuant to section 53-504;

(4) Serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the beer industry; and

(5) Adopt and promulgate rules and regulations to carry out sections 53-501 to 53-505.

**Source:** Laws 2016, LB1105, § 3.

**53-504 Nebraska Beer Industry Promotional Fund; created; use; investment; holder of craft brewery license; annual fee; use.**

(1) The Nebraska Beer Industry Promotional Fund is created. The fund shall consist of money credited pursuant to this section, fees received from shipping licenses issued to beer manufacturers pursuant to subsection (2) of section 53-123.15, gifts, grants, bequests, and any money appropriated by the Legislature. For administrative purposes, the fund shall be located in the Department of Agriculture.

(2) Beginning July 1, 2016, in addition to the annual license fee imposed by section 53-124.01, each holder of a craft brewery license shall pay an annual fee in the amount of two hundred fifty dollars to the Nebraska Liquor Control Commission or shall opt out of paying the additional fee on forms provided by the commission. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Nebraska Beer Industry Promotional Fund.

(3) The Department of Agriculture, at the direction of and in cooperation with the Nebraska Craft Brewery Board, shall use the Nebraska Beer Industry Promotional Fund to develop and maintain programs for the research and advancement of the beer brewing process, the marketing and promotion of the beer industry in Nebraska, and the marketing and promotion of agricultural products and their byproducts grown and produced in Nebraska for use in the beer industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the field of beer brewing and business development, as deemed necessary by the board, and programs to carry out the purposes of this subsection. None of the money credited to the Nebraska Beer Industry Promotional Fund may be used for lobbying purposes.

(4) Money in the Nebraska Beer Industry Promotional Fund not expended during any fiscal year may be reappropriated for the ensuing biennium. 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 2016, LB1105, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**53-505 Nebraska Craft Brewery Board; annual report; contents; fee.**

(1) The Nebraska Craft Brewery Board shall publish an annual report on or before January 1 of each year which shall set forth in detail the following:

(a) The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board; and

(b) A detailed explanation of all programs for which the board approved funding during the most recently completed fiscal year pursuant to section 53-504.

(2) Each annual report shall be presented electronically to the Nebraska Liquor Control Commission within thirty days after its publication and made available also to any person who requests a copy. Except for the annual copy required by this section to be provided to the commission, the board may charge a nominal fee to cover the costs of printing and postage for making available copies of its annual reports.

**Source:** Laws 2016, LB1105, § 5.