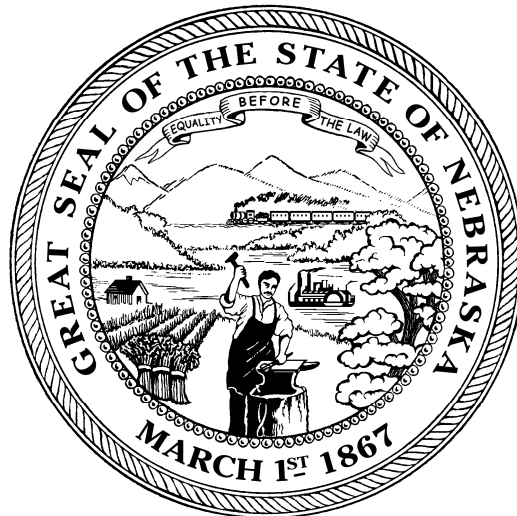


REVISED STATUTES OF NEBRASKA

REISSUE OF VOLUME 3B

2021

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 46 TO 53, INCLUSIVE



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I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the Reissue of Volume 3B of the Revised Statutes of Nebraska, 2021, contains all of the laws set forth in Chapters 46 to 53, appearing in Volumes 3A and 3B, Revised Statutes of Nebraska, 2010, as amended and supplemented by the One Hundred Second Legislature, First Session, 2011, through the One Hundred Seventh Legislature, First Special Session, 2021, of the Nebraska Legislature, in force at the time of publication hereof.

Marcia M. McClurg
Revisor of Statutes

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OF NEBRASKA, 2021

(in full)

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(abbreviated)

EDITORIAL STAFF

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Micah L. Uher Assistant Revisor of Statutes
Mark A. Ludwig Associate Revisor of Statutes
Andrew J. Conroy Associate Revisor of Statutes
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Matthew J. Pernicek Legal Counsel
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Catlin Bates Assistant Statute Technician

IRRIGATION AND REGULATION OF WATER

CHAPTER 46
IRRIGATION AND REGULATION OF WATER

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(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.

Irrigation districts organized hereunder are liable for seepage damages without regard to negligence under Article I, section 21, of the Constitution of Nebraska. *Halstead v. Farmers Irr. Dist.*, 200 Neb. 314, 263 N.W.2d 475 (1978).

Provision of public power district law did not apply to irrigation districts. *Baum v. County of Scotts Bluff*, 172 Neb. 225, 109 N.W.2d 295 (1961).

Where plaintiff's land was never included in district his right to abandon use of irrigation water was not controlled by irrigation district act. *Faught v. Platte Valley P. P. & I. Dist.*, 155 Neb. 141, 51 N.W.2d 253 (1952).

An irrigation district organized under the laws of Nebraska and irrigating lands wholly within this state is subject to the irrigation laws of this state regardless of the fact that the district's headgates and diversion works may be in an adjoining

state. *State ex rel. Sorensen v. Mitchell Irr. Dist.*, 129 Neb. 586, 262 N.W. 543 (1935).

Judgment of board as to matters submitted to it by statute cannot be collaterally attacked, but question whether land is under ditch already constructed of sufficient capacity to water same, is not left to adjudication of board. *Sowerwine v. Central Irr. Dist.*, 85 Neb. 687, 124 N.W. 118 (1909); *State v. Several Parcels of Land*, 80 Neb. 424, 114 N.W. 283 (1907).

Irrigation district act sustained as constitutional. Irrigation districts are public rather than municipal corporations, and their officers are officers of the state. *Board of Directors of Alfalfa Irr. Dist. v. Collins*, 46 Neb. 411, 64 N.W. 1086 (1895).

Irrigation district, organized after county board was induced to believe law was complied with, was de facto corporation and liable on warrants. *Draver v. Greenshields & Everest Co.*, 29 F.2d 552 (8th Cir. 1928).

46-102 Terms, defined.

(1) For purposes of the Irrigation District Act:

(a) Elector means:

(i) For any irrigation district or proposed irrigation district not described in subdivision (1)(a)(ii) of this section, any resident of the State of Nebraska who:

(A) Owns not less than fifteen acres of land within any such district;

(B) Is an entryman of government land within any such district; or

(C) Holds a leasehold estate in not less than forty acres of state land within any such district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(ii) For any irrigation district or proposed irrigation district which borders another state and comprises less than two thousand acres and in which one-

half or more of the landowners, leaseholders, or entrymen of government lands are not residents of the State of Nebraska, any person who:

- (A) Owns not less than fifteen acres of land within any such district;
- (B) Is an entryman of government land within any such district; or

(C) Holds a leasehold estate in not less than forty acres of state land within any such 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) Status as an elector, including residency, shall be established as provided by this section and section 46-110.

(3) 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.

(4) In the case of land owned or leased by joint tenants, each joint tenant 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.

(5) In the case of land owned or leased by tenants in common, each tenant 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.

(6) 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 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.

(7) In the case of land owned or leased under a life tenancy, each remainderman 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.

(8) 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 responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(9) 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 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.

(10) 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 shall act as the elector on behalf of the estate.

(11) 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; Laws 2021, LB507, § 5. Effective date May 6, 2021.

46-103 Irrigation district; how formed; petition.

A petition shall be filed with the county board, signed by a majority of the electors of the proposed district who shall own or hold leasehold estates in a majority of the whole number of acres belonging to or held by the electors of the proposed district, which petition shall set forth and particularly describe the boundaries of the district and shall pray that the same be organized under the provisions of sections 46-101 to 46-128.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-103.

The boundaries of the irrigation district must be sufficiently definite and certain to identify the land to be irrigated thereby. Baker v. Central Irr. Dist., 93 Neb. 460, 140 N.W. 765 (1913).

46-104 Petition; map; requirements.

The petitioners must accompany the petition with a map of the proposed district. The map shall show the location of the proposed canal or the works by means of which it is intended to irrigate the proposed district, and of all the canals situated within the boundaries of the proposed district; *Provided*, canals that only pass through such lands, and which do not in fact irrigate any of the same, need not be shown. If the water supply be from natural streams, the flow of such stream or streams shall be stated in cubic feet per second. If the water supply for the district is to be gathered by storage reservoirs, the map shall show the location of the proposed reservoirs and shall give their capacity in

acre-feet. The map shall be drawn to a scale of two inches to the mile. Cross sections of the proposed canal, and all canals existing within the boundaries of the proposed district and shown on the map, and all proposed dams and embankments, shall be given in sufficient number to show the contemplated mode of construction, and the capacity shall be given in cubic feet per second of the proposed and such existing canals. Such cross sections shall be drawn to a scale of ten feet to the inch, and the map and cross sections shall be certified to by a competent irrigation engineer.

Source: Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-104.

46-105 Petition; bond; requirements.

The petitioners must accompany the petition with a good and sufficient bond, to be approved by the county board, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all costs in case such organization shall not be effected.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; 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. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-105.

46-106 Petition; notice of hearing; report by Director of Natural Resources.

The petition for the proposed district shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where the petition is presented, together with a notice stating the time of the meeting at which the petition will be presented. A copy of such petition and all maps and other papers filed with the petition shall be filed in the office of the Department of Natural Resources for at least four weeks before the date set for such hearing. The Director of Natural Resources shall examine such petition, maps, and other papers and, if he or she deems it necessary, shall further examine the proposed district, the works proposed to be purchased, or the location of the works to be constructed. The director shall prepare a report upon the matter in such form as he or she deems advisable and submit the report to the county board at the meeting set for the hearing of the petition.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; 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. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-106; Laws 2000, LB 900, § 86.

46-107 Petition and plan of irrigation; hearing before county board; finding; appeal to district court; procedure; bond.

At the time set for the hearing, the county board may amend such plan of irrigation as it may find advisable, and when it shall have determined to proceed with the matter, the board may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such

changes in the proposed boundaries as it may find to be proper, and shall establish and define boundaries; *Provided*, the board shall, upon final hearing, make a specific finding as to the territory within the proposed district, which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district, which finding shall be deemed a final order for purposes of review to the district court on appeal. Such appeal shall be taken by filing with the county clerk of the county wherein the land or any part of the land lies, a written notice of the appeal within ten days from the date of such specific finding. The interested party or parties appealing shall give a bond to be approved by the clerk of the district court, conditioned to pay all costs of the proceedings on appeal, should the decision of the county board be sustained, and shall within thirty days file a transcript of the proceedings had upon such specific finding with the clerk of the district court, where the matter shall be tried and determined de novo.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; 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. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-107.

Order of county board establishing boundaries of districts is conclusive, at least in collateral attack on question whether land will be benefited by irrigation, but otherwise on question if such lands cannot from some source be irrigated. *Sowerwine v.*

Central Irr. District, 85 Neb. 687, 124 N.W. 118 (1909); *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-108 District; lands included; lands irrigated by pumping.

Upon specific findings as to inclusion of any land in the proposed district, to which objection shall have been made, it shall be the duty of the county clerk to notify the objector, his agent or attorney, in writing, of the fact that such specific finding shall have been made, within three days after the finding shall have been made, nor shall any land which will not, in the judgment of the board, be benefited by irrigation by such system be included in such district; *Provided*, any persons whose lands are susceptible of irrigation from the same source, shall, upon application of the owner to the board, be entitled to have such lands included in such district. The person, firm, corporation or municipal corporation whose land, within any proposed district, is provided with water by pumping, whether from well, lake or stream, shall not be included therein except upon written application of the owner or owners of such land; *Provided*, that one thousand gallons per minute of water shall exempt one hundred and sixty acres, and lesser or greater amounts of water shall exempt in proportion.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; 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, § 46-108.

Land may not be included in an irrigation district that is provided with water by pump for its irrigation. *Smith v. Frenchman-Cambridge Irr. Dist.*, 155 Neb. 270, 51 N.W.2d 376 (1952).

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 num-

bered 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.

46-112 District officers; election; terms.

The officers elected in compliance with section 46-110, upon qualifying as provided in section 46-113, shall hold their respective offices until the next

general election for the irrigation district when their successors shall be elected. At such general election the member of the board of directors having the highest number of votes shall hold his or her respective office for a term of three years, the member of the board of directors having the next highest number of votes shall be declared to be elected for a term of two years, and the member of the board of directors having the least number of votes shall be elected for a term of one year. Each year thereafter, one member of the board of directors shall be elected for a term of three years. Each member of the board of directors shall be nominated and elected by a majority vote of the electors of the division in the irrigation district and shall be an elector of the division for which he or she is to serve as such director. If, after the election, it appears that any two or more persons have an equal and the highest number of votes for the same office, the county board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be elected.

An automatic recount shall be held in accordance with sections 32-1119 to 32-1122. The regular election of the district shall be held on the first Tuesday in February.

Source: Laws 1905, c. 166, § 1, p. 649; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 170; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-112; Laws 1979, LB 421, § 14; Laws 1994, LB 76, § 555; Laws 1995, LB 99, § 12.

46-113 Officers; oath; bond; district as federal fiscal agent; additional bond.

Within ten days after receiving his certificate of election, hereinafter provided for, each director shall take and subscribe the official oath, and each member of the board of directors shall execute an official bond in the sum of one thousand dollars, which bond shall be approved by the county judge of the county where such organization was effected, and after such approval all bonds shall be recorded in the office of the county recorder of such county; *Provided*, that in case any district organized hereunder is appointed fiscal agent of the United States or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any federal reclamation project, such treasurer and each such director shall execute a further additional official bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization; such additional bonds to be approved, recorded, and filed as herein provided for other official bonds, and any additional bonds may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly, and completely perform their respective duties. All official bonds herein provided for shall be in the form prescribed by law for official bonds for county officers except that the obligee named in the bond shall be the district.

Source: Laws 1895, c. 70, § 4, p. 273; Laws 1897, c. 86, § 1, p. 361; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1,

p. 171; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-113.

Cross References

Official bonds, form, filing, recording, and approval, see sections 11-101 to 11-122.

46-114 Directors; assumption of office; tenure.

The director elected shall assume the duties of his office the first Tuesday in March after his election; *Provided*, all incumbents shall hold their respective offices until their successors are elected and qualified, as provided in section 46-112.

Source: Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 345; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 172; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 246; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 342; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-114.

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.

46-118 Elections; statement of result entered in board record; certificate of election; vacancies, how filled.

The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such results, which statement must show (1) the whole number of votes cast in the district and in each division of the district; (2) the names of the persons voted for; (3) the office to fill which each person was voted for; (4) the number of votes given in each precinct for each of such persons; and (5) the number of votes given in the district for each of such persons. The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the office of assessor or treasurer, the vacancy shall be filled by appointment by the board of directors. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by the two remaining members of the board and the district treasurer. An officer appointed as above provided shall hold his office until the next general election of the district and until his successor is elected and qualified.

Source: Laws 1895, c. 70, § 8, p. 275; R.S.1913, § 3464; Laws 1915, c. 67, § 1, p. 167; C.S.1922, § 2864; C.S.1929, § 46-108; R.S.1943, § 46-118.

46-119 Board; organization; officers; bonds; payment of premiums.

On the first Wednesday following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary, treasurer, and assessor. All such offices may be held by one person. When the offices of secretary and treasurer are held by one person he shall give a penal bond in the sum of not less than fifty percent of the general fund levy for the current year, but when the offices of secretary and treasurer are held by separate individuals, then the treasurer shall be required to give bond in the sum of not less than twenty percent of the levy for general fund purposes for the current year. The secretary shall be required to give a penal bond in a sum of not less than thirty percent of the general fund levy for the current year, but the board of directors may increase the amount of either or both of such bonds in such an amount as it may think necessary. All of such bonds shall be approved by the directors of the district; *Provided*, that the district shall pay the cost of such bonds.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 246; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-119.

46-120 Board; general powers and duties.

The board shall have the power and it shall be its duty to manage and conduct the business affairs of the district, make and execute all necessary contracts, employ such agents, officers, and employees as may be required and prescribe their duties, establish equitable bylaws, rules and regulations for the distribution and use of water among the owners of such lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of

sections 46-101 to 46-1,111. The bylaws, rules and regulations shall be printed in convenient form for distribution in the district.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-120.

Valid contract made with irrigation company may, as between parties or their successors in interest, be enforced, subject to reasonable regulations, provided rights of other water users are not thereby unlawfully curtailed. *Clague v. Tri-State Land Co.*, 84 Neb. 499, 121 N.W. 570 (1909).

Board may purchase or condemn all lands necessary for construction, use, maintenance, repair, and improvement of canals. *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the

landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

Right to contract for a supply of water was not limited by 1915 act requiring vote of electors in certain cases. *Bridgeport Irr. Dist. v. United States*, 40 F.2d 827 (8th Cir. 1930).

Contract with irrigation district whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. *New York Trust Co. v. Farmers' Irr. District*, 280 F. 785 (8th Cir. 1922).

46-120.01 Board; obligate lands; emergency repairs and replacement; limitation.

The board of directors of an irrigation district shall not obligate the lands of the district except for emergency and unforeseen damage, repairs, and replacement, in excess of five dollars per acre for districts irrigating more than sixty thousand acres per year without submitting the question to the electors of the district as defined in section 46-102. The election on such question shall be conducted in the same manner as other elections held under the provisions of Chapter 46, article 1.

Source: Laws 1967, c. 277, § 1, p. 746.

46-121 Annual meeting of water users; petition.

Upon petition signed by ten percent of the water users of any irrigation district and lodged with the president of such district or with any other officer during the absence or disability of the president for any cause, the president or other officer of such district shall call an annual meeting of the water users of the district upon notice given in the usual manner for elections therein, where reports of the manager, secretary, and board of directors shall be made and the general policies of the irrigation district shall be discussed.

Source: Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-121.

46-122 Right to water delivery; duty of directors.

(1) It is hereby expressly provided that all water distributed for irrigation purposes shall attach to and follow the tract of land to which it is applied unless a change of location has been approved by the board of directors pursuant to sections 46-2,127 to 46-2,129 or by the Department of Natural Resources pursuant to section 46-294 or sections 46-2,122 to 46-2,126.

(2) The board of directors may by the adoption of appropriate bylaws provide for the suspension of water delivery to any land in such district upon which the

irrigation taxes levied and assessed thereon shall remain due and unpaid for two years. It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

(3) In times of reduced water supply, when the volume of water is not adequate to be beneficially used when equitably apportioned to all landowners in the district, the board may, after providing notice to landowners in a portion of the district and upon receiving no objections from the majority of such landowners, elect not to deliver water to that portion of the district. Such election shall not subject the district to liability under section 46-160 and shall not affect the rights of landowners in that portion of the district to water deliveries in the future. Any election to not deliver water to a portion of the district shall be made on a year-to-year basis, not to exceed ten years, and such election shall not subject any landowner to adjudication of his or her water right under section 46-229. The board may adjust the tolls or charges made to landowners within the district to reflect the decrease in supply to those landowners in the portion of the district not receiving water pursuant to such election by the board.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 525; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-122; Laws 1983, LB 21, § 1; Laws 1995, LB 99, § 13; Laws 2000, LB 900, § 87; Laws 2003, LB 619, § 3.

By this section the Legislature intended that subirrigated lands having no use for water should not be charged with operating expense. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

Provision of amendatory act of 1923 authorizing directors to impose burden upon landowners of constructing and maintaining laterals, etc., was unconstitutional. *State ex rel. Campbell v. Gering Irr. Dist.*, 114 Neb. 329, 207 N.W. 525 (1926).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. *State ex rel. Clarke v. Gering Irr. Dist.*, 109 Neb. 642, 192 N.W. 212 (1923).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance

and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. *DeLaet v. Blue Creek Irr. Dist.*, 23 Neb. App. 106, 868 N.W.2d 483 (2015).

All appropriations for irrigation purposes since 1895 are inseparably appurtenant to specific land. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

46-123 Right of eminent domain in others; preserved.

Sections 46-119 to 46-122 shall not be construed to deprive any person, persons, company or corporation entitled thereto, to exercise the right of eminent domain.

Source: Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 526; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 173; Laws 1917, c. 82, § 1, p. 195; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 248; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-123.

Cross References

For eminent domain proceedings, see sections 76-701 to 76-724.

46-124 Board of directors; meetings; quorum; open records.

The board of directors shall hold regular meetings in its office each month and such special meetings as may be required for the proper transaction of business. All special meetings shall be ordered by the president of the board. The order must be entered of record and notice thereof must be given to each member. The order must specify the business to be transacted, and no other than that specified shall be transacted at such special meeting. All meetings of the board must be publicized. Two members shall constitute a quorum for the transaction of business, and upon all questions requiring a vote there shall be a concurrence of at least two members. All records of the board must be open to the inspection of any elector during business hours, and the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings thereof in one newspaper in general circulation in the district, if the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Source: Laws 1895, c. 70, § 10, p. 276; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 527; Laws 1913, c. 226, § 1, p. 656; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 173; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-124; Laws 1975, LB 578, § 1.

Cross References

Legal rate for advertising notices, see section 33-141.

46-124.01 District; budget; public inspection.

An irrigation district organized under sections 46-101 to 46-128 shall maintain a current copy of its annual budget at its principal office for public inspection during business hours.

Source: Laws 1989, LB 502, § 2.

46-125 Surveys; acquisition of property; eminent domain; procedure; construction; powers of board.

The board, its agents, and employees shall have the right to enter upon any land within the district to make surveys, and may locate the line of any canal or canals and the necessary branches of such location. The board shall have the right to acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants of any kind or nature, and lands for reservoirs for the storage of water and all necessary appurtenances. The board shall have the right to acquire by purchase or condemnation any irrigation works, power plant, ditches, canals, or reservoirs already constructed for the use of the district. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. In case of purchase, the bonds of the district hereinafter provided for may be used at their par value in payment. The board may also construct the necessary dams, reservoirs, and works for the collection of water for the district, and do any

lawful act necessary to be done that sufficient water may be furnished to each landowner in the district for irrigation purposes.

Source: Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-125; Laws 1951, c. 101, § 89, p. 485.

Cross References

For construction requirements and exclusions, see Safety of Dams and Reservoirs Act, see section 46-1601 et seq.

Irrigation district may acquire fee simple title under eminent domain. *Burnett v. Central Neb. P. P. & I. Dist.*, 147 Neb. 458, 23 N.W.2d 661 (1946).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. State

ex rel. *Clarke v. Gering Irr. Dist.*, 109 Neb. 642, 192 N.W. 212 (1923).

Board may acquire by purchase or condemnation all lands necessary for construction, use, maintenance, repair and improvement of its canals. *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-126 Contracts with United States authorized; bonds; issuance; tax levy.

The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on such bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy, assessment, or toll provided for in sections 46-134, 46-135, 46-152, and 46-1,137, an amount sufficient to meet each year all payments accruing under the terms of any such contract. If contract is made with the United States in this section provided and bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued, or, if required to raise funds in addition to the amount of such contract, shall be issued only in the amount needed in addition thereto.

Source: Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-126; Laws 1967, c. 280, § 1, p. 757.

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water was not limited by a requirement that the contract be approved by the voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Board of directors of district may contract with the United States for delivery and distribution of water under the Federal Reclamation Act. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

Purpose of law is to authorize irrigation districts to contract with the United States for the construction, maintenance, and operation of works to carry to and distribute water on lands of district. *Livanis v. Northport Irr. Dist.*, 121 Neb. 777, 238 N.W. 757 (1931).

Board of directors was authorized to contract with the United States for a supply of water without authorization by the voters of the district. *Bridgeport Irr. Dist. v. United States*, 40 F.2d 827 (8th Cir. 1930).

46-127 District as fiscal agent of the United States; authority.

The board may accept on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United

States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the board shall have full power to do any and all things required by the federal statutes in connection therewith, and all things required by the rules and regulations established by any department of the federal government in regard thereto.

Source: Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-127.

46-128 Irrigation; declared a public use.

The use of all water required for the irrigation of lands of any district formed under the provisions of sections 46-101 to 46-128, together with canals and ditches already constructed, the rights-of-way for canals and ditches, sites for reservoirs and pumping plants, and all other property required in fully carrying out the provisions of sections 46-101 to 46-1,111, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

Source: Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 568; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-128.

This section does no more than provide that land necessarily taken to benefit an irrigation district is taken for a public use, and whether the use for which property is taken is public or private in nature is a judicial question, not a legislative one. *Chimney Rock Irr. Dist. v. Fawcus Springs Irr. Dist.*, 218 Neb. 777, 359 N.W.2d 100 (1984).

(b) DISTRICT; CORPORATE POWERS

46-129 District property; title; conveyance in trust; procedure; election.

The legal title to all property acquired under the provisions of sections 46-101 to 46-1,111, or acquired through purchase at tax sale foreclosure, shall immediately and by operation of law vest in such irrigation district in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in said sections. The board is hereby authorized and empowered to hold, use and acquire, manage, occupy and possess such property, and may convey the same, in whole or in part, to the United States, in trust, or to any trustee, for any period not exceeding thirty years, when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district. Notice of such election shall be given by posting notice thereof in three public places in each of the election precincts in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors is kept, once each week for three successive weeks. Such notice shall specify the time and place of holding the election and shall contain a brief summary of the proposition involving the proposed conveyance. Such election shall be held and the result thereof determined and declared in conformity with the provisions of law governing the election of officers in such district, as nearly as may be practicable. No informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. Where such conveyance

is made pursuant to the terms and provisions of any contract entered into by the district, upon full compliance with the terms and provisions of such contract by the district the title to such property shall revert to the district; *Provided, however*, that the board of directors of any irrigation district may authorize the sale and conveyance of any property acquired through purchase at a tax foreclosure sale, to any other person, firm or corporation, by a resolution duly adopted by the board of directors of such district; *and provided further*, that where the property has been purchased by such district at a tax foreclosure sale, the consideration, for the sale and conveyance of such property by the district, shall not be less than the amount bid for it by such district at the tax foreclosure sale.

Source: Laws 1895, c. 70, § 11, p. 278; R.S.1913, § 3467; Laws 1917, c. 83, § 1, p. 196; C.S.1922, § 2867; C.S.1929, § 46-111; Laws 1937, c. 103, § 2, p. 362; C.S.Supp.,1941, § 46-111; Laws 1943, c. 110, § 1, p. 388; R.S.1943, § 46-129.

Cross References

Tax foreclosure sale, see Chapter 77, article 19.

Notice of election by publication and posting was sufficient. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Landowner by adverse use of drainage ditch discharging water into irrigation canal for more than statutory period of ten years, may acquire from irrigation district an easement for that

purpose. Central Irr. Dist. v. Gering Irr. Dist., 122 Neb. 199, 240 N.W. 289 (1932).

Contract with irrigation district, whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. Operation was not exercise of state sovereignty. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

46-130 Board of directors; acquisition of property; corporate powers.

The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of sections 46-101 to 46-1,111, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of said sections, or to enforce, maintain, protect or preserve any and all rights, privileges, and immunities created by said sections, or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

Source: Laws 1895, c. 70, § 12, p. 278; R.S.1913, § 3468; C.S.1922, § 2868; C.S.1929, § 46-112; R.S.1943, § 46-130.

Persons dealing with officers and agents of public corporation are required to act with reference to authority, limitations, and restrictions imposed by legislation authorizing organization and

government thereof. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

(c) ASSESSMENTS

46-131 District annual assessment; how prepared.

The assessor must, between March 1 and the third Monday in May in each year, assess all the real property in the district to the persons who own, claim, or have the possession or control thereof, at its full cash value, less the value of all improvements thereon. He shall also assess all leasehold estates in all lands belonging to the State of Nebraska, which are leased to any person, association, or corporation, to the person holding such lease, at the full cash value of such leasehold estate, less the value of all improvements thereon. He must prepare

an assessment book with appropriate headings, in which must be listed all such property within the district, in which must be specified in separate columns under the appropriate heading (1) the name of the person to whom the property is assessed; and if the name is not known to the assessor, the property must be assessed to unknown owners; (2) land by township, range, section, or fractional section, and when such land is not a congressional division or subdivision, by metes or bounds or other description sufficient to identify it, giving an estimate of the number of acres, locality, and improvements thereon; (3) city and town lots, naming the city or town and the number and block according to the system of numbering in such city or town and the improvements thereon; (4) the cash value of real estate other than city or town lots; (5) the cash value of improvements on such real estate; (6) the cash value of city and town lots; (7) the cash value of improvements on real estate, assessed to persons other than the owners of such real estate; (8) the full value of all leasehold estates of persons leasing state lands; (9) the cash value of the improvements on state lands held under lease; (10) the full value of all property assessed; (11) the total value of all property after the equalization of the board of directors; and (12) such other things as the board of directors may require from him; *Provided*, that city and town lots within any irrigation district, which are occupied and used exclusively for other than agricultural purposes, shall not be assessed or taxed by such irrigation district during the time such lots are so occupied and used. The assessment of any property in the name of the wrong person shall in no way invalidate the assessment thereof.

Source: Laws 1895, c. 70, § 16, p. 281; Laws 1897, c. 86, § 2, p. 361; Laws 1903, c. 121, § 1, p. 619; R.S.1913, § 3472; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2382; C.S.1929, § 46-117; R.S.1943, § 46-131; Laws 1953, c. 156, § 1, p. 493; Laws 1957, c. 196, § 1, p. 693.

Amendment in 1917 of this section, exempting from taxation city lots occupied and used for other than agricultural purposes was constitutional, but such lots were not relieved from liability for bonds previously issued. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

In action by landowner to cancel tax, presumption is that proceedings were regular hereunder. *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

46-132 Assessments; equalization; notice.

On or before May 15 in each year the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than ten or more than twenty days from the first publication of the notice; and in the meantime the assessment books must remain in the office of the secretary for the inspection of all persons interested.

Source: Laws 1895, c. 70, § 17, p. 282; Laws 1897, c. 86, § 3, p. 362; R.S.1913, § 3473; C.S.1922, § 2873; C.S.1929, § 46-118; R.S. 1943, § 46-132.

46-133 Assessments; equalization; hearings; valuation; appeal; procedure.

Upon the day specified in the notice required by section 46-132 for the meeting of the board of directors which is hereby constituted a board of equalization for that purpose, it shall meet and continue in session from day to day, as long as may be necessary, not to exceed six days, exclusive of Sundays,

to hear and determine such objections to the valuation and assessment as may come before it; and the board may change the valuation as may be just, but shall not raise the valuation of any land as assessed by the assessor without giving the owner of such land due notice to appear and show cause why such valuation should not be raised. The secretary of the board shall be present during its session and note the changes made in the valuation of property, and in the names of the persons whose property is assessed; and within ten days after the close of the session he or she shall have the total values, as finally equalized by the board, extended into columns and added. Appeals may be taken from any action of the irrigation board of equalization to the district court.

Source: Laws 1895, c. 70, § 18, p. 282; R.S.1913, § 3474; C.S.1922, § 2874; Laws 1929, c. 134, § 1, p. 487; C.S.1929, § 46-119; Laws 1931, c. 90, § 1, p. 251; C.S.Supp.,1941, § 46-119; R.S.1943, § 46-133; Laws 1995, LB 490, § 25; Laws 1997, LB 397, § 3.

46-134 Bond and United States contract fund; assessment; schedule of increased assessments.

The board shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 46-126 provided, which when collected, shall be called the bond and United States contract fund of Irrigation District. At the expiration of ten years after the issuing of the bonds the board must increase such assessment for the ensuing years in a percentage of the whole amount of bonds outstanding, as follows: For the eleventh year, five percent; for the twelfth year, six percent; for the thirteenth year, seven percent; for the fourteenth year, eight percent; for the fifteenth year, nine percent; for the sixteenth year, ten percent; for the seventeenth year, eleven percent; for the eighteenth year, thirteen percent; for the nineteenth year, fifteen percent; and for the twentieth year, a percentage sufficient to pay off such bonds.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 331; Laws 1901, c. 77, § 1, p. 467; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 175; Laws 1919, c. 110, § 1, p. 269; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-134.

Where no obligation to the United States Government exists and annual interest is not involved, there is no authority to issue bonds under this section. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

Directors are authorized to levy taxes upon all real estate within the district for the purpose of creating a fund to pay for upkeep of ditch and incidental expense of the district. *Wyman v. Searle*, 88 Neb. 26, 128 N.W. 801 (1910).

46-135 General fund; assessment; records and tax lists.

If the board deems it necessary, it may at the same time levy an assessment for the care and maintenance of irrigation works already constructed and for the payment of salaries of officers and general expenses, which assessment shall be called the general fund of Irrigation District. The secretary of the board must compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund to be paid on the property therein enumerated, and shall certify to the county clerk of the

county in which such land is located the amount of taxes in each fund levied upon each tract of land by the board. The county clerk shall enter the amount of each fund in separate columns of the tax list of his county. All tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of such irrigation district.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 322; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-135.

Record failed to disclose that an assessment was made for the purposes designated in this section. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-136 District taxes; collection; payment; medium; fee.

The general fund tax mentioned in section 46-135, shall be collected by the county treasurer at the same time, and in the same manner as all other taxes are collected in this state; *Provided, however*, such county treasurer shall receive in payment of the general fund tax, above mentioned, for the year in which such tax is levied, warrants drawn against such general fund, the same as so much lawful money of the United States, if such warrants do not exceed the amount of general fund tax which the person tendering the same owes; and he shall accept payment of the district bond fund tax and issue receipt therefor whenever the same may be tendered, and shall receive in payment of the district bond fund tax, for the year in which such taxes were levied, interest coupons past due issued by such irrigation district the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of the district bond fund which the person tendering the same owes. The county treasurer shall be entitled to a collection fee of one-half of one percent on all money collected, to be deducted from the bond interest fund of the district.

Source: Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 332; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 346; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-136.

This section provides for the collection of taxes for the general fund of the irrigation district in the same manner as other taxes are collected. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-137 District taxes; disposition.

All such taxes collected or received for the district bond and general funds, either in money, interest coupons or warrants on the general fund, by the treasurer of any county other than the one in which the district was originally organized shall be remitted by him to the treasurer of the county in which the district was originally organized; such remittance to be made on the fifth day of every month. All such taxes collected or received for the general fund of a district by the treasurer of the county in which the district was originally organized shall be paid to the treasurer of such irrigation district, upon an order signed by the president and secretary of such district, and all warrants

received in payment of general fund taxes may be turned over, as so much money, to the district treasurer on such orders.

Source: Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-137.

This section provides for the disposition of the taxes raised in an irrigation district. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-138 Failure of district board to levy taxes; county board to act.

In case of the neglect or refusal of a board of directors of any irrigation district to cause an assessment and levy to be made as provided in sections 46-134 and 46-135, for the payment of principal and interest of outstanding bonds, and for all payments due or to become due the ensuing year to the United States, under any contract between the district and the United States, accompanying which the bonds of the district have not been deposited with the United States as in section 46-126 provided, and for expenses incurred in organizing such district, then the assessment of property made for county purposes, after the same shall have been adjusted by the county equalization board, shall be adopted and shall be the basis and assessment for the district, and the county board of the county in which the district was originally organized shall cause an assessment roll of such district to be prepared, and shall make the levy for the payment of the principal and interest on bonds and to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have been deposited with the United States as in section 46-126 provided, and expenses for organizing such district in the same manner and with like effect as if the same had been made by the board of directors; and the expense incident thereto shall be borne by such district. All such taxes collected and paid to the county treasurer shall be received by such treasurer in his official capacity, and he shall be responsible for the safekeeping, disbursement and payment thereof, the same as for other money collected by him as such treasurer. When requested in writing to do so by the secretary of any irrigation district, the county treasurer shall make weekly reports of all such irrigation district taxes collected by him for the district from which the request came, giving the amount collected for each fund, the interest collected and the legal description of the land on which such taxes were collected.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-138.

This section does not give the county board of equalization authority to levy taxes for the payment of a judgment obtained against an irrigation district. *Loup County v. Rumbaugh*, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-139 Warrants; issuance by district; limit; past-due obligations; special levy; unused balances; disposition.

No irrigation district shall in any year issue warrants in excess of ninety percent of the levy for such year, except that in case of due and outstanding

obligations against the district contracted prior to the year in which any levy is made, the district board shall have the power to make an additional levy not to exceed one and four-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district to create a special fund for the payment of past-due obligations. If the claims or obligations against any fund for any year are fully paid, the board shall have the power to transfer any unused balance to any fund for any preceding or succeeding year.

Source: Laws 1905, c. 166, § 1, p. 651; R.S.1913, § 3476; C.S.1922, § 2876; C.S.1929, § 46-121; R.S.1943, § 46-139; Laws 1953, c. 287, § 63, p. 967; Laws 1979, LB 187, § 168; Laws 1992, LB 719A, § 148.

Warrants issued by officers of irrigation district prior to levy, when no funds exist, are void. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931).

46-140 Assessments; land belonging to state; when due; lien; preference; enforcement.

All assessments on real property and assessments on leasehold estates on land belonging to the state shall be due and payable on January 1 next following the date of assessment thereof, and commencing on January 1 the same shall be a lien against the property assessed and shall draw interest at the rate of nine percent per annum from May 1 of the year following such assessment; and such lien is not removed until the assessments are paid or the property sold for the payment thereof. It shall be the duty of the county and township treasurers to collect such assessment in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection and sale of land for such taxes are hereby made applicable to the collection of assessments under sections 46-131, 46-134, and 46-135, and taxes so collected shall constitute a sinking fund to be used for the payment of the bonds and the interest thereon. The leasehold estate of any lessee of lands belonging to the state may be sold for taxes assessed as herein provided against such leasehold estate in the same manner and form as provided by the revenue laws of this state for the collection and sale of lands for taxes; *Provided*, the lien for the bonds of any series shall be a preferred lien to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract.

Source: Laws 1895, c. 70, § 20, p. 284; Laws 1897, c. 86, § 5, p. 363; Laws 1903, c. 121, § 1, p. 620; R.S.1913, § 3477; Laws 1915, c. 69, § 6, p. 178; C.S.1922, § 2877; C.S.1929, § 46-122; Laws 1933, c. 136, § 28, p. 540; C.S.Supp.,1941, § 46-122; R.S.1943, § 46-140; Laws 1949, c. 157, § 1, p. 398.

Special annual assessments regularly levied for the payment of irrigation bonds become a lien against real estate in said district on and after October 1 in the year in which they are made. *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945).

Irrigation district's lien by virtue of tax sale certificates, issued in its favor by county treasurer but not delivered or paid for, is not destroyed by failure to enforce within statutory period, and

is entitled to priority over earlier mortgage. *Flansburg v. Shumway*, 117 Neb. 125, 219 N.W. 956 (1928).

Where irrigation district assessments were given priority over mortgage in foreclosure suit, parties stipulating district's organization was legal and assessment duly made could not afterwards challenge district's right to levy assessments. *Flansburg v. Shumway*, 117 Neb. 125, 219 N.W. 956 (1928).

46-141 Assessment; payment under protest; refund.

When any person against whose property such assessments have been made shall pay such assessment under protest as provided by the general revenue law of this state, the board of directors of any irrigation district organized under the provisions of sections 46-101 to 46-128 may pass upon and make orders disposing of money paid under protest to the county treasurer in the county or counties in which such lands are situated in the same form and manner as provided by law, and such proceedings shall be had as in such revenue law provided insofar as the same applies; *Provided, however*, no taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of his tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessments should be refunded: (1) That the land upon which such tax or assessment was levied is not within the boundaries of the district for which the lands were taxed, or assessed; (2) that the title to the lands is in the State of Nebraska; (3) that the lands could not be benefited by irrigation either by reason of subirrigation or by reason of being city and town lots and occupied and used exclusively for other than agricultural or grazing purposes, or that the lands are nonsusceptible of irrigation from the canal of the district; *Provided*, that where unentered and unpatented lands, the title to which is in the United States, are included in any irrigation district pursuant to the provisions of the Act of Congress, entitled An Act to promote the reclamation of arid lands, approved August 11, 1916, and acts amendatory thereto, shall not be subject to the provisions of this section, but shall be subject to taxation as provided by such Acts of Congress.

Source: Laws 1903, c. 121, § 1, p. 621; R.S.1913, § 3478; Laws 1917, c. 80, § 1, p. 189; C.S.1922, § 2878; C.S.1929, § 46-123; R.S.1943, § 46-141.

Compliance with this section is required in order to recover back taxes paid on nonirrigable land. *Birdwood Irr. Dist. v. Brodbeck*, 148 Neb. 824, 29 N.W.2d 621 (1947).

Subirrigated lands in district, not benefited by irrigation, are not taxable. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

Amendment in 1917 of this section, exempting city lots, etc., from taxation, was constitutional. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

46-142 District bonds; payment by county treasurer; redemption; investment of funds.

Upon the presentation of the coupons and bonds due at the office of the treasurer of the county in which the district was originally organized, it shall be his or her duty to pay the same from the bond funds. Whenever, after ten years from the issuance of the bonds, the sinking fund shall amount to the sum of ten thousand dollars, the board of directors may direct the county treasurer in which the district was originally organized to pay such an amount of the bonds not due as the money of the fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least three weeks in some daily newspaper in each of the cities hereinbefore named, and in any newspaper which the board may deem advisable, for sealed proposals for the redemption of the bonds. Such proposals shall be opened by the board in open meeting, at the time named in the notice, and the lowest bid for the bonds must be accepted. No bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of the bonds shall desire to have the same redeemed, as herein

provided, the money shall be invested by the treasurer of the county in which the district was originally organized, under the direction of the board of directors of the district, in United States bonds, or the bonds or warrants of the state, which shall be kept in the bond fund, and may be used to redeem the district bonds whenever the holders thereof may desire.

Source: Laws 1895, c. 70, § 21, p. 284; Laws 1901, c. 77, § 2, p. 470; Laws 1903, c. 122, § 2, p. 624; R.S.1913, § 3479; C.S.1922, § 2879; Laws 1925, c. 131, § 1, p. 345; C.S.1929, § 46-124; R.S.1943, § 46-142; Laws 1996, LB 299, § 22.

46-143 District bonds; payment by district treasurer; additional bonds required.

The board of directors may at any time elect to have the bonds and coupons of the district paid by the district treasurer instead of the county treasurer, and in that case, they shall, after passing a resolution to that effect, furnish the county treasurer with a copy of the resolution, duly certified by the district secretary. Upon receiving the resolution, it shall be the duty of the county treasurer to pay to the district treasurer from time to time, upon order of the board of directors of the district, any money in his hands belonging to the bond fund of the district, whether collected from principal or interest of such bonds, and upon such payment, the county treasurer shall be relieved from any further liability in regard to funds so paid over. The district treasurer, in such cases, shall give additional bond in double the amount of money which the board of directors estimate will come into his possession under sections 46-142 and 46-143 in any semiannual period. Upon the giving of such bond, it shall be the duty of the district treasurer to pay the bonds and coupons when due, and he shall have all the duties and rights given to the county treasurer by said sections in regard to payment of bonds and coupons, and investment funds.

Source: Laws 1925, c. 131, § 1, p. 346; C.S.1929, § 46-124; R.S.1943, § 46-143.

It is the duty of the treasurer of the district, when funds are available, to pay bonds and coupons then due upon presentment, irrespective of date of registration. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-144 Special assessment; warrants; election; notice; rate of assessment; disposition of proceeds.

The board of directors may at any time, when in its judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in sections 46-101 to 46-1,111, including the purpose of creating a construction fund to be financed by the issuance of warrants, the principal of which warrants shall be payable, in not to exceed twenty years, with interest paid annually thereon not to exceed ten percent per annum. Such warrants may not be issued in the aggregate to exceed ninety percent of the fund anticipated to be raised over the years by special assessment authorized in this section. Such election shall be called upon the notice prescribed and shall be held and the result thereof determined and declared in all respects in conformity with such sections. The notice of such election shall specify the aggregate amount of money proposed to be raised, the purpose for which it is intended to be raised, the number of years in which such special assessment will be made, and

whether or not warrants as authorized in this section will be to finance the construction fund so that contracts may be let and the project completed before collection of the tax. The ballots shall contain the words Assessment Yes, or Assessment No. If a majority of the votes are Assessment Yes, the board shall at the time of the annual levy thereunder levy an assessment sufficient to raise the amount paid. The rate of assessment shall be ascertained by deducting fifteen percent for anticipated delinquencies from the aggregate taxable value of the property in the district as it appears on the assessment roll for the current year and then dividing the sum by the remainder of such aggregate taxable value. The assessment so levied and computed shall be entered on the assessment roll and upon the tax list by the county clerk and collected at the same time and in the same manner as other assessments, and all revenue laws of this state for the collection and sale of land for taxes are hereby made applicable to the assessment provided for in this section. When collected such assessment shall be paid over by the county treasurer to the district treasurer for the purpose specified in the notice in such special election.

Source: Laws 1895, c. 70, § 28, p. 289; Laws 1897, c. 86, § 8, p. 365; R.S.1913, § 3486; C.S.1922, § 2886; C.S.1929, § 46-131; R.S. 1943, § 46-144; Laws 1972, LB 1509, § 2; Laws 1979, LB 187, § 169; Laws 1981, LB 146, § 1; Laws 1992, LB 719A, § 149.

Cross References

Collection of taxes, see Chapter 77, article 17.

Delinquent taxes, sale of land, see Chapter 77, article 18.

(d) CONSTRUCTION BY DISTRICT

46-145 Construction of works; notice; bond of contractor; bids; letting.

After adopting a plan of such canal or canals, storage reservoirs, and works, the board of directors shall give notice, by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district, provided a newspaper is published therein, and in such other newspapers as it may deem advisable, calling for bids for the construction of the work or any portion thereof, and if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which at the time and place shall be opened in public. As soon as convenient thereafter the board shall let such work, either in part or as a whole, to the lowest responsible bidder, or it may reject any or all bids and readvertise for proposals, or may proceed to construct the work under its own superintendence with the labor of the residents of the district. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board payable to such district for its use, to an amount equal to twenty-five percent of the contract price, for the faithful performance of the contract; *Provided, however*, in case twenty-five percent of the contract price shall exceed the sum of fifty thousand dollars, then such bond shall be in the sum of fifty thousand dollars. The work shall be done under the direction and to the satisfaction of the

engineer and be approved by the board. The provisions of this section shall not apply in the case of any contract between the district and the United States.

Source: Laws 1895, c. 70, § 22, p. 285; Laws 1911, c. 161, § 1, p. 533; R.S.1913, § 3480; Laws 1915, c. 69, § 7, p. 179; C.S.1922, § 2880; C.S.1929, § 46-125; R.S.1943, § 46-145.

Cross References

For other provisions for letting of contracts, see Chapter 73.

Provisions must be complied with before board is authorized to proceed with construction. Reasonable value of services, not exceeding contract price, can be recovered under authorized contract of directors, even though same is illegal, where district has received benefit. *Lincoln & Dawson County Irr. Dist. v. McNeal*, 60 Neb. 613, 83 N.W. 847 (1900).

46-146 Claims against district; warrants; interest; payment; procedure.

No claim shall be paid by the district treasurer until the same shall have been allowed by the board of directors and only upon warrants signed by the president and countersigned by the secretary. If the district treasurer does not have sufficient money on hand to pay such warrant when presented for payment, he or she shall endorse thereon not paid for want of funds and the date when presented over his or her signature. From the time of such presentation until paid such warrants shall draw interest payable when redeemed or annually at the discretion of the board of directors. Whenever there is no cash on hand in the district treasury for the payment of general fund warrants when presented, the board of directors may issue from time to time general fund warrants in denominations not greater than ten thousand dollars to the aggregate amount required. In no case shall such warrants be in an amount greater than ninety percent of the general fund levy for the current year. Such warrants shall be drawn on the general fund levy for the current year and be payable to the irrigation district. The board of directors may sell or discount the same to the best advantage possible, but not at a discount to exceed ten percent. The board shall deposit the proceeds of such sale in some local bank, capital stock financial institution, or qualifying mutual financial institution in the name of the district, subject to the check of the chairperson of such district, countersigned by the secretary, in payment of any claim or claims ordered paid out of such fund by the board of directors. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 197; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 250; Laws 1929, c. 131, § 1, p. 481; C.S.1929, § 46-126; R.S.1943, § 46-146; Laws 1969, c. 51, § 110, p. 341; Laws 1981, LB 146, § 2; Laws 1989, LB 33, § 26; Laws 2001, LB 362, § 30.

In absence of levy, officers of irrigation district are without power to issue warrants. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931).

Irrigation district, organized after county board was induced to believe that law was complied with, is corporation de facto,

and liable on warrants. *Draver v. Greenshields & Everest Co.*, 29 F.2d 552 (8th Cir. 1928).

46-147 Construction fund; deposit with county treasurer; when authorized; disbursement.

The board may draw from time to time from the construction fund, and deposit it in the county treasury of the county where the office of the board is

situated, any sum in excess of the sum of twenty-five thousand dollars. The county treasurer is hereby authorized and required to receive and receipt for the same, and place the same to the credit of the district, and he shall be responsible upon his official bond for the safekeeping and disbursement of the same, as provided in sections 46-147 and 46-148. He shall pay out the same, or any part thereof, to the treasurer of the district only, and upon the order of the board, signed by the president and attested by the secretary.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-147.

46-148 County treasurer; reports to district board; contents.

The county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-148.

46-149 District treasurer; reports to district board; contents; warrants; register; order of payment.

The district treasurer shall also report to the board in writing, on the first Monday of each month the amount of money in the district treasury, the amount of receipts for the month preceding and the amount of items and expenditures, and such report shall be verified and filed with the secretary of the board. The district treasurer shall keep a register in which he shall enter each warrant presented for payment showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-149.

46-150 Warrants; form.

All warrants shall be drawn payable to the claimant or bearer, the same as county warrants, except as otherwise herein provided.

Source: Laws 1897, c. 86, § 6, p. 365; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-150.

Cross References

For provisions as to interest on warrants, see section 45-106.

Warrants issued by officers of irrigation district prior to levy and when no fund exists are void. *Elliott v. Calamus Irr. Dist.*, 120 Neb. 714, 235 N.W. 95 (1931).

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.

Expense of engineer for survey and plans is preliminary and payable out of construction fund. Willow Springs Irr. Dist. v. Wilson, 74 Neb. 269, 104 N.W. 165 (1905).

Construction fund must be provided before indebtedness incurred for construction. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

Amendment of 1899 was valid. Baltes v. Farmers Irr. Dist., 60 Neb. 310, 83 N.W. 83 (1900).

46-152 Cost of organization, operation, and improvements; how paid; tolls; assessments; borrowing.

For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of such portions of such canal and works as are completed and in use, including salaries of officers and employees, or repayment of any contract for construction by and between the United States of America and any irrigation district as provided in section 46-126, the board may either fix rates of tolls and charges, and collect the same from all persons using such canal for irrigation or other purposes, or may provide for the payment of such expenditures by a levy of assessments therefor, or by both tolls and assessments; if by the latter method, such levy shall be made upon the completion and equalization of the assessment roll; and the board shall have the same powers and functions for the purposes of such levy as are now possessed by boards of supervisors in this state, and such assessment shall be collected as provided in section 46-136. If, after the annual assessment for the current year, the funds provided are for some unusual or unforeseen cause insufficient for the proper maintenance and operation of the district, the board of directors shall have the power to borrow additional funds needed, to an amount not to exceed fifty cents per acre for the land embraced in the district, pledging credit of the district for the payment of the same, and

shall include in the estimate for the levy for the ensuing year for the general fund the amount so borrowed, and provide for the payment of the same.

Source: Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 132; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 180; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-152; Laws 1967, c. 280, § 2, p. 758.

46-153 Construction across streams, highways, railroads, and ditches; right-of-way over state lands; state water and water rights.

The board of directors shall have the power to construct such works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of such canal or canals may intersect or cross, in such manner as to afford security for life and property; but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness. Every company whose railroad shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and grant the privilege aforesaid; and if such railroad company and such board, or the owners and controllers of the property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of the crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land. The right-of-way is hereby given, dedicated, and set apart, to locate, construct and maintain such works over and through any of the lands which are or may be the property of the state; and also there is given, dedicated, and set apart for the use and purposes aforesaid, all water and water rights belonging to this state within the district.

Source: Laws 1895, c. 70, § 25, p. 287; R.S.1913, § 3483; C.S.1922, § 2883; C.S.1929, § 46-128; R.S.1943, § 46-153.

Irrigation canal may cross another stream. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Grant by the Legislature of right-of-way over public school lands is an unconstitutional interference with the control of public school lands vested in the Board of Educational Lands

and Funds. *State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist.*, 143 Neb. 153, 8 N.W.2d 841 (1943).

Public power districts are governed by the statute relating to irrigation districts as to their appropriation, crossing, and use of highways. *Wright v. Loup River Public Power Dist.*, 133 Neb. 715, 277 N.W. 53 (1938).

(e) SALARY AND INTEREST OF DISTRICT OFFICIALS

46-154 Directors; salaries and expenses; officers, employees, attorneys, and agents; compensation.

The board of directors shall provide a payment for each director of not to exceed seventy dollars per day for each day that a director attends meetings of the board or is engaged in matters concerning the district, but not to exceed two thousand eight hundred dollars per annum. Each director shall also be paid necessary traveling expenses actually incurred while engaged in the performance of his or her duties, including mileage at the rate provided in section 81-1176. The board shall fix the compensation to be paid to the other officers named in sections 46-101 to 46-1,111, including the secretary, the assessor, and the treasurer to be paid out of the treasury of the district. The board may also employ a chief engineer, an attorney, and such other agents, assistants, and employees as may be necessary and provide for their compensation.

Source: Laws 1895, c. 70, § 26, p. 288; Laws 1897, c. 86, § 7, p. 365; R.S.1913, § 3484; C.S.1922, § 2884; C.S.1929, § 46-129; R.S.

1943, § 46-154; Laws 1951, c. 149, § 1, p. 597; Laws 1961, c. 226, § 1, p. 670; Laws 1979, LB 282, § 1; Laws 1981, LB 204, § 75; Laws 2000, LB 901, § 2.

46-155 Director or officer; interest in contract prohibited; accepting gratuity or bribe; penalty; forfeiture of office.

No director or any officer named in sections 46-101 to 46-1,111 shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom, nor shall receive any bonds, gratuity or bribe. For any violation of this provision, such officer shall be guilty of a Class IV felony, and conviction thereof shall work a forfeiture of his office.

Source: Laws 1895, c. 70, § 27, p. 288; R.S.1913, § 3485; C.S.1922, § 2885; C.S.1929, § 46-130; R.S.1943, § 46-155; Laws 1977, LB 40, § 255.

(f) LIMIT OF INDEBTEDNESS

46-156 Limitation on debts and liabilities; eminent domain; procedure; contracts with United States.

(1) The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of sections 46-101 to 46-1,111, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

(2) Any irrigation district organized under the provisions of sections 46-101 to 46-128 shall have power to and it shall be its duty to provide for the proper drainage of any and all lands embraced within its limits which are or have been subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated or from any cause not the fault or by the consent of such owner or lessee. For such purpose such district shall have all the authority herein granted for levying special assessments or otherwise providing funds necessary to properly drain such lands, entering upon lands for the purpose of making surveys, exercising the right of eminent domain, contracting for the construction of necessary ditches, and further shall have the right to extend such drainage ditches outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be lawfully used or to return the same to the stream from which its canal is taken. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The powers herein granted shall include the power to enter into a contract with the United States to carry out and effectuate all proper drainage of the district or any part thereof, and any such contract shall be treated for all intents and purposes as if made under section 46-126.

Source: Laws 1895, c. 70, § 29, p. 290; Laws 1911, c. 162, § 1, p. 535; R.S.1913, § 3487; Laws 1915, c. 69, § 9, p. 181; C.S.1922, § 2887; C.S.1929, § 46-132; R.S.1943, § 46-156; Laws 1951, c. 101, § 90, p. 486.

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water.

bution of water was not limited by a requirement that the contract be approved by the voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Provisions of this section are not applicable to public power and irrigation districts organized under Chapter 70. *Halligan v. Elander*, 147 Neb. 709, 25 N.W.2d 13 (1946).

This section, with others mentioned, shows intent to limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and requiring that all unused waters shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

Remedy provided herein for drainage of lands within an irrigation district is exclusive. *Omaha Life Ins. Co. v. Gering & Ft. Laramie Irr. Dist.*, 123 Neb. 761, 244 N.W. 296 (1932).

Power and irrigation district is not limited to irrigation alone but extends to drainage even beyond district boundaries. *Central*

Irr. Dist. v. Gering Irr. Dist., 122 Neb. 199, 240 N.W. 289 (1932).

Lessee of land involved may require district to drain all subirrigated lands in district. *Livanis v. Northport Irr. Dist.*, 121 Neb. 777, 238 N.W. 757 (1931).

Irrigation district is not absolutely required hereby to drain all nearby lands seeped by percolating subterranean water, and remedy provided by this section for drainage of such lands is exclusive. *Spurrier v. Mitchell Irr. Dist.*, 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Subirrigated lands and waters referred to in this section are those which are part of the irrigation system, and liability of district is limited to damages caused by its own waters. *State ex rel. Read v. Farmers Irr. Dist.*, 116 Neb. 373, 217 N.W. 607 (1928).

This section is a legislative recognition of the general right of an appropriator to recapture and reuse seepage waters. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

(g) VOLUME OF WATER

46-157 Apportionment of water; duty of water commissioners.

In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion in a just and equitable proportion, a certain amount of such water upon certain or alternate weekly days to different localities as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. The water commissioners shall consist of the chairman of the board of directors of each of the districts affected.

Source: Laws 1895, c. 70, § 30, p. 290; R.S.1913, § 3488; C.S.1922, § 2888; C.S.1929, § 46-133; R.S.1943, § 46-157.

46-158 High water; duty of board; automatic measuring devices; interchange of water.

It shall be the duty of the board of directors to keep the water flowing through the ditches and canals under its control to the full capacity of such ditches and canals in times of high water when the same can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators, except that upon the filing of a petition in the office of the board of directors of any irrigation district, signed by a majority of the landowners who are electors therein, requesting that rules and regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, it shall become the duty of such board to immediately provide for the adoption and enforcement of the same, namely, (1) that an automatic measuring device be placed in or near the headgate or any main diverting gate of the main canal, in order that a continuous record shall be kept by such district of the amount of water received into the canal for the use of the lands in such district, (2) that automatic measuring devices be placed in the headgates or all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that the person having charge of the canal shall keep a separate and

correct record of the amount of water delivered through each of such headgates at all times and shall file the same in the office of the board of directors for public inspection, and (3) that a system be provided for the interchange of water from one tract of land to another at the option of the owner or lessee of any lands within such district at any time, and further provide that rules made by the board or the person having charge of such canals for delivering water in alternate sections of a canal or ditch shall not interfere with this right.

Source: Laws 1895, c. 70, § 31, p. 290; Laws 1911, c. 163, § 1, p. 536; R.S.1913, § 3489; C.S.1922, § 2889; C.S.1929, § 46-134; R.S. 1943, § 46-158; Laws 1987, LB 140, § 1.

(h) DIVERSION OF WATER WITHOUT COMPENSATION

46-159 Prior acts not repealed; diversion of water without compensation prohibited.

None of the provisions of sections 46-101 to 46-1,111, shall be construed as repealing or in any way modifying the provisions of any other law relating to the subject of irrigation or water commissioners. Nothing in said sections contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor under the laws of this state authorizing the taking of private property for public use.

Source: Laws 1895, c. 70, § 32, p. 290; R.S.1913, § 3490; C.S.1922, § 2890; C.S.1929, § 46-135; R.S.1943, § 46-159.

(i) LIABILITY FOR FAILURE TO DELIVER WATER

46-160 Irrigation district; liability for failure to deliver water; conditions; limitation.

Every irrigation district within the State of Nebraska shall be liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations; *Provided, however,* such districts shall not be liable as herein provided, unless the party suffering such damages by reason of such negligence or failure shall, within thirty days after such negligent acts are committed, or such districts shall fail to deliver water, serve a notice in writing on the chairman of the board of directors of such district, setting forth particularly the acts committed or the omissions of duties to be performed on the part of the district, which it is claimed to constitute such negligence or omission and that he expects to hold such district liable for whatever damages may result; *provided further,* such action shall be brought within one year from the time the cause has accrued.

Source: Laws 1911, c. 164, § 1, p. 538; R.S.1913, § 3526; C.S.1922, § 2926; C.S.1929, § 46-171; R.S.1943, § 46-160.

Action grounded on negligence for failure to deliver water was barred. *Cover v. Platte Valley Public Power & Irr. Dist.*, 156 Neb. 644, 57 N.W.2d 275 (1953).

Requirement of written notice to district does not apply to damages arising from the invasion of contract right to a specific quantity of the natural flow of water in a river. *Ledingham v. Farmers Irr. Dist.*, 135 Neb. 276, 281 N.W. 20 (1938).

Irrigation district, being liable hereunder for failure to deliver water to landowner entitled thereto, is not liable for injury resulting from lawful application of water to land by owners. *Spurrier v. Mitchell Irr. Dist.*, 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Notice required by this section is in time, if filed within thirty days from time district had reasonable opportunity to make repair and negligently fails to do so, or, without reasonable

excuse, signifies it will not be made. Six v. Bridgeport Irr. Dist., 105 Neb. 254, 179 N.W. 1014 (1920).

(j) CHANGE OF BOUNDARIES

46-161 District boundaries; changes; inclusion of lands; petition; contents.

The holder or holders of title or evidence of title representing one-half or more of any body of contiguous lands, adjacent to the boundary of an irrigation district and which taken together constitute one tract of land, may file with the board of directors of such district a petition in writing, praying that the boundaries of such district be changed to include their lands. The petition shall describe the boundaries of the parcel or tract of land and shall also describe the boundaries of the several parcels respectively owned by the petitioners, if the petitioners are the owners of distinct parcels, but such description need not be more particular than required when such lands are entered by the county assessor in the assessment book. Such petition shall contain the consent of the petitioners to the inclusion in such district of the parcels or tracts of land described in the petition and of which the petition alleges that they are respectively the owners and shall be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Source: Laws 1895, c. 70, § 34, p. 291; R.S.1913, § 3492; Laws 1921, c. 273, § 1, p. 901; C.S.1922, § 2892; C.S.1929, § 46-137; R.S.1943, § 46-161; Laws 1999, LB 103, § 1.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.

Assessment book, description of lands, see section 77-1613.

46-162 Inclusion of lands; notice; advance cost of proceeding, by whom paid.

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issuance of bonds are required by section 46-194 to be published. The notice shall state the filing of such petition and the names of the petitioner, a description of the lands mentioned in the petition, and the prayers of the petition; and it shall notify all persons interested, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause, in writing, if any they have, why the change in the boundaries of the district as proposed in the petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under sections 46-161 to 46-173.

Source: Laws 1895, c. 70, § 35, p. 291; R.S.1913, § 3493; C.S.1922, § 2893; C.S.1929, § 46-138; R.S.1943, § 46-162.

46-163 Inclusion of lands; hearing; assent of parties; when implied.

The board of directors, at the time and place mentioned in the notice, or at such other time or times to which the hearing of the petition may be adjourned shall proceed to hear the petition, and all the objections thereto, presented in writing by any person, showing cause as aforesaid, why the proposed change of

the boundaries of the district should not be made. The failure of any person interested in the district or in the matter of the proposed change of its boundaries, to show cause in writing as aforesaid, shall be deemed and taken as an assent on his part to the change of the boundaries of the district, as prayed for in the petition, or to such a change thereof as will include a part of the lands. The filing of such petition with the board as aforesaid shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of the boundaries that they may include the whole or any portion of the lands described in the petition.

Source: Laws 1895, c. 70, § 36, p. 292; R.S.1913, § 3494; C.S.1922, § 2894; C.S.1929, § 46-139; R.S.1943, § 46-163.

46-164 Inclusion of lands; payment of share of original cost to new district; when required.

The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated, the several amounts to be determined by the board, as such petitioners or their grantors would have been required to pay to such district as assessments had such lands been included in such district at the time the same was originally formed.

Source: Laws 1895, c. 70, § 37, p. 293; R.S.1913, § 3495; C.S.1922, § 2895; C.S.1929, § 46-140; R.S.1943, § 46-164.

46-165 Inclusion of lands; action of board; order; contents.

The board of directors, if it deems it is not for the best interest of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. If it deems it is for the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not be made or if, having shown cause, such person withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in the petition, or some part thereof. The order shall describe the boundaries of the included lands and it shall clearly show the change in the boundaries of the district.

Source: Laws 1895, c. 70, § 38, p. 293; R.S.1913, § 3496; C.S.1922, § 2896; C.S.1929, § 46-141; R.S.1943, § 46-165; Laws 1955, c. 182, § 1, p. 512.

46-166 Inclusion of lands; objection made; action of board.

If any person interested in the district, or the proposed change of its boundaries shall show cause as aforesaid why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deems it for the best interest of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe

the exterior boundaries of the lands which the board is of the opinion should be included within the boundaries of the district when changed.

Source: Laws 1895, c. 70, § 39, p. 293; R.S.1913, § 3497; C.S.1922, § 2897; C.S.1929, § 46-142; R.S.1943, § 46-166.

46-167 Inclusion of lands; objection made; election required; notice; assent of Secretary of the Interior; when required.

Upon the adoption of the resolution mentioned in section 46-166, the board shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which such election shall be held, and cause notice thereof to be given and posted and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by section 46-194 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall have the words For change of boundary, or Against change of boundary, or words equivalent thereto. The notice of election shall describe the boundaries in such manner and terms that it can be readily traced; *Provided*, that in case contract has been made between the district and the United States as provided in section 46-126 or 46-156, no change shall be made in the boundaries of the district and the board shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

Source: Laws 1895, c. 70, § 40, p. 294; R.S.1913, § 3498; Laws 1915, c. 69, § 10, p. 181; C.S.1922, § 2898; C.S.1929, § 46-143; R.S.1943, § 46-167.

46-168 Inclusion of lands; result of vote; duty of board.

If at such election a majority of all the votes cast at the election shall be against such change of the boundaries of the district, the board shall order that the petition be denied, and shall proceed no further in that matter. If a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order the boundaries of the district to be changed in accordance with the resolutions adopted by the board.

Source: Laws 1895, c. 70, § 41, p. 294; R.S.1913, § 3499; C.S.1922, § 2899; C.S.1929, § 46-144; R.S.1943, § 46-168; Laws 1955, c. 182, § 2, p. 513.

46-169 Changed boundaries; copy of order filed in recorder's office; effect.

Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

Source: Laws 1895, c. 70, § 42, p. 295; R.S.1913, § 3500; C.S.1922, § 2900; C.S.1929, § 46-145; R.S.1943, § 46-169.

Cross References

Original boundaries, filing of order, see section 46-111.

46-170 Changed boundaries; record; certified copy as evidence.

Upon the filing of the copies of the order, as mentioned in section 46-169, the secretary shall record in the minutes of the board the petition aforesaid; and the minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Source: Laws 1895, c. 70, § 43, p. 295; R.S.1913, § 3501; C.S.1922, § 2901; C.S.1929, § 46-146; R.S.1943, § 46-170.

46-171 Inclusion of lands; guardians, executors, and administrators; when authorized to sign petitions.

A guardian, executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition mentioned in section 46-161, and may show cause, as mentioned in section 46-166 why the boundaries of the district should not be changed.

Source: Laws 1895, c. 70, § 44, p. 295; R.S.1913, § 3502; C.S.1922, § 2902; C.S.1929, § 46-147; R.S.1943, § 46-171.

46-172 Inclusion of new land in district; redivision required; election precincts.

In case of the inclusion of any land within any district by proceedings under section 46-161 the board of directors must, at least thirty days prior to the next succeeding general election, make an order redividing such 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 thereafter be elected by each division. For the purpose of elections the board of directors shall establish one or more election precincts in the districts and define the boundary or boundaries thereof, which may thereafter be changed from time to time as the board may deem necessary.

Source: Laws 1895, c. 70, § 45, p. 295; R.S.1913, § 3503; Laws 1919, c. 111, § 2, p. 274; C.S.1922, § 2903; C.S.1929, § 46-148; R.S.1943, § 46-172.

46-173 District boundaries; changes; exclusion of lands; effect.

The boundaries of any irrigation district organized under the provisions of sections 46-101 to 46-128 may be changed and tracts of land included within the boundaries of such district, at or after its organization under the provisions of said sections, may be excluded therefrom in the manner prescribed in sections 46-174 to 46-184; but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or

chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

Source: Laws 1895, c. 70, § 46, p. 296; R.S.1913, § 3491; C.S.1922, § 2891; C.S.1929, § 46-136; R.S.1943, § 46-173.

Equity will not interfere to separate nonirrigable lands from irrigation district in absence of showing that plaintiffs have sought to avail themselves of statutory method herein provided. *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-174 Exclusion of lands; petition; form; contents.

The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district may file with the board of directors of the district a petition praying that such tracts and any other tracts contiguous thereto may be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of such petitioners which are included within such boundaries, but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance.

Source: Laws 1895, c. 70, § 47, p. 296; R.S.1913, § 3504; Laws 1921, c. 272, § 1, p. 900; C.S.1922, § 2904; C.S.1929, § 46-149; R.S.1943, § 46-174; Laws 1999, LB 103, § 2.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.

Assessment book, description of lands, see section 77-1613.

This section does not preclude owner of land not benefited by irrigation from paying tax under protest and filing claim for refund, instead of moving to exclude such land from district, as remedy hereunder is not exclusive. *Morrow v. Farmers Irr. Dist.*, 117 Neb. 424, 220 N.W. 680 (1928).

After district is duly organized, statutory procedure herein prescribed for detaching lands, other than nonirrigable, is exclusive. *Sowerwine v. Central Irr. Dist.*, 85 Neb. 687, 124 N.W. 118 (1909); *Andrews v. Lillian Irr. Dist.*, 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-175 Exclusion of lands; notice; form; contents.

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in 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 the notice shall be so published in a newspaper published within each of such counties, or if no newspaper is published therein, then by posting such notice for the same time in at least three public places in the district, and in case of the posting of the notices, one of such notices must be posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in such petition, and the prayer of the petition, and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause in writing, if any they have, why the change in the boundaries of such district, as proposed in such petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the regular meeting of the board next after the expiration of the time for the publication of the notice.

Source: Laws 1895, c. 70, § 48, p. 297; R.S.1913, § 3505; C.S.1922, § 2905; C.S.1929, § 46-150; R.S.1943, § 46-175.

46-176 Exclusion of lands; hearing; assent of parties; when implied; nonirrigable lands.

The board of directors, at the time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by the persons, showing cause as aforesaid, why the prayer of such petition should not be granted. The failure of any person interested in the district to show cause in writing why the tract or tracts of land mentioned in the petition should not be excluded from such district shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from the district; and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof; *Provided*, in no case shall any land be held by any district or taxed for irrigation purposes which cannot from any natural cause be irrigated thereby.

Source: Laws 1895, c. 70, § 49, p. 297; R.S.1913, § 3506; C.S.1922, § 2906; C.S.1929, § 46-151; R.S.1943, § 46-176.

A determination that land cannot from any natural cause be irrigated requires an examination of the intrinsic characteristics of the land and cannot be based on external factors. *Crouse v. Pioneer Irr. Dist.*, 272 Neb. 276, 719 N.W.2d 722 (2006).

Whether land cannot from any natural cause be irrigated must be determined from the facts in each case. *Smith v. Frenchman-Cambridge Irr. Dist.*, 155 Neb. 270, 51 N.W.2d 376 (1952).

The question of nonirrigability of lands from natural causes can be raised in proceedings to foreclose tax sale certificate.

Birdwood Irr. Dist. v. Brodbeck, 148 Neb. 824, 29 N.W.2d 621 (1947).

Government subdivision or other well-defined tract ought not to be included in irrigation district if, for natural causes, it is incapable of irrigation. *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

Where party proceeds to have land detached, in order to defeat jurisdiction of board, it must be proved and found by court that land is nonirrigable, or exempted by statute. *Sowerwine v. Central Irr. Dist.*, 85 Neb. 687, 124 N.W. 118 (1909).

46-177 Exclusion of lands; action of board.

The board of directors, if it deems it not for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district, shall order that the petition be denied; but if it deems it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district shows cause in writing why the lands or some portion thereof should not be excluded from the district, or if having shown cause withdraws the same, and also, if there are no outstanding bonds of the district and no contract between the district and the United States, then the board may order that the lands mentioned in the petition or some defined portion thereof, be excluded from the district.

Source: Laws 1895, c. 70, § 50, p. 298; R.S.1913, § 3507; Laws 1915, c. 69, § 11, p. 182; C.S.1922, § 2907; C.S.1929, § 46-152; R.S.1943, § 46-177.

46-178 Exclusion of lands; assent of bondholders and Secretary of the Interior required, when; order of exclusion.

If there are outstanding bonds of the district or if the district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board may adopt a resolution to the effect that the board deems it to the best interests of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can be

readily traced. The holders of such outstanding bonds may give their assent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district and in case a contract has been made with the United States, as aforesaid, the Secretary of the Interior may assent to such change. The assent may be acknowledged by the several holders of such bonds in the same manner and form as are required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as an acknowledgment of such conveyance, except the assent of the Secretary of the Interior need not be acknowledged. The assent must be filed with the board and must be recorded in the minutes of the board; and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the assent; but if such assent of the bondholders and, in case of contract with the United States such assent of the Secretary of the Interior, is not filed, the board shall deny and dismiss the petition.

Source: Laws 1895, c. 70, § 51, p. 298; R.S.1913, § 3508; Laws 1915, c. 69, § 12, p. 182; C.S.1922, § 2908; C.S.1929, § 46-153; R.S.1943, § 46-178.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.

Legislature has recognized principle that lands subject to irrigation bonds when issued could not afterwards be exempted from liability therefor, by exclusion from district, without impairing obligation of contract. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

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.

46-180 Exclusion of lands; result of vote; order of board.

If at such election a majority of all votes cast shall be against the exclusion of the lands from the district, the board shall deny and dismiss the petition and

proceed no further in the matter, but if a majority of such votes shall be in favor of the exclusion of the lands from the district the board shall thereupon order that the lands mentioned in the resolution be excluded from the district. The order shall describe the boundaries of the district, should the exclusion of the lands from the district change the boundaries of the district, and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary.

Source: Laws 1895, c. 70, § 53, p. 300; R.S.1913, § 3510; C.S.1922, § 2910; C.S.1929, § 46-155; R.S.1943, § 46-180.

46-181 Exclusion of lands; copy of order filed with recorder; effect.

Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof certified by the president and secretary of the board shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; and thereupon the district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

Source: Laws 1895, c. 70, § 54, p. 300; R.S.1913, § 3511; C.S.1922, § 2911; C.S.1929, § 46-156; R.S.1943, § 46-181.

Cross References

Original boundaries, filing of order, see section 46-111.

46-182 Order of exclusion; vacancy in office of director; when created; how filled.

If the land excluded from any district shall embrace the greater portion of any division or divisions of such district, then the office of director for such division shall become and be vacant at the expiration of ten days from the final order of the board excluding the lands, and such vacancies shall be filled by appointment by the county board of the county where the office of such board is situated from the district at large. A director appointed as above provided shall hold his office until the next regular election for the district, and until his successor is elected and qualified.

Source: Laws 1895, c. 70, § 55, p. 300; R.S.1913, § 3512; C.S.1922, § 2912; C.S.1929, § 46-157; R.S.1943, § 46-182.

46-183 Exclusion of lands; redivision required; election precincts.

At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing such district into three divisions as nearly equal in size as practicable, which shall be numbered first, second and third, and one director shall be elected by each division. For the purpose of election in such district the board of directors shall establish one or more election precincts, and define the boundary or boundaries thereof, which precincts may be changed from time to time, as the board of directors may deem necessary.

Source: Laws 1895, c. 70, § 56, p. 301; R.S.1913, § 3513; Laws 1919, c. 111, § 3, p. 274; C.S.1922, § 2913; C.S.1929, § 46-158; R.S.1943, § 46-183.

46-184 Exclusion of lands; assessments; refund; when allowed; procedure.

In case of the exclusion of any lands under the provisions of sections 46-173 to 46-183, there shall be refunded to any and all persons who have paid any assessment or assessments to such district, or any land so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board of directors may designate; *Provided*, where such parties have realized benefits from the organization and operation of the district, the value of such benefits shall be deducted from the assessments paid in by such parties, and the balance, if any, refunded.

Source: Laws 1895, c. 70, § 58, p. 301; R.S.1913, § 3514; C.S.1922, § 2914; C.S.1929, § 46-159; R.S.1943, § 46-184.

(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.

46-186 Discontinuance of district; result of election; resubmission; sale of property; appointment of appraisers; notice of sale.

If a majority of the votes shall be For discontinuance No, there shall not be another election upon the question of a discontinuance of the district during the year in which such election was held. If a majority of the votes are For discontinuance Yes, then the board shall immediately notify all persons having claims against the district of the result of such election, and may proceed to adjust, settle and compromise any and all such claims, in whatever form the indebtedness of such district may be. For the purpose of raising money to pay any and all indebtedness of the district, such board may sell and dispose of the canal franchises and other property belonging to the district at not less than a valuation to be fixed by a board of three appraisers, one member of which shall be appointed by the board of directors of such

district, and one shall be appointed by the county board of the county in which the district was originally organized, which two appraisers shall elect a third. The board of appraisers shall be sworn by the county clerk of the county, to appraise the canal franchises and other property of the district at their cash value; and as soon thereafter as practicable, the appraisers shall make an appraisal, and report in writing their appraisal of all the property owned by the district to the board of directors. The board shall advertise the property for sale at least four weeks in such a manner as in the judgment of the board shall be to the best interest of the district; and shall state in such advertisement a description of the property, and the time and place when bids in writing for the same shall be opened and considered, and bids orally received and considered.

Source: Laws 1897, c. 91, § 3, p. 372; Laws 1903, c. 123, § 1, p. 626; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S. 1943, § 46-186.

46-187 Discontinuance of district; sale of property; opening of bids; sale by private negotiation.

At the time designated in such notice, or as soon thereafter as such board can meet, it shall open and consider all bids received for the purchase of the property and it shall have the power to reject any and all bids for such property which are not in the judgment of the board a fair and just consideration for the property. After bids are thus rejected by the board, it may by private negotiations with any person, persons or corporation, sell and convey, by deed executed by such board, all of the property, for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of such district; and in case the district has no bonded indebtedness, the interest upon such deferred payments shall be such as may be agreed upon by the board and the purchaser, not exceeding the rate allowed by law.

Source: Laws 1903, c. 123, § 1, p. 627; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-187.

46-188 Discontinuance of district; sale of property; deferred payments lien on property sold; additional security.

Such deferred payments shall be a lien upon all of the property thus sold by the board which shall have the same force and effect as a mortgage against such property and may, when due, be foreclosed in the same manner provided by law for the foreclosure of mortgages. In addition to such lien, the board of directors may require the purchaser of the property to furnish the district with such additional security upon all deferred payments as in its judgment shall make such payments secure. All notes, bonds, mortgages and other securities shall be made out to and in the name of the irrigation district, and shall be, together with the money received by such sale, deposited with the county treasurer of the county in which the district was originally organized.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-188.

Cross References

For action to foreclose mortgage, see sections 25-2137 to 25-2155.

46-189 Discontinuance of district; sale of property; action to collect purchase price; in whose name brought.

All suits at law or equity brought for the purpose of collecting such evidences of indebtedness, shall be brought in the name of such district by counsel employed by the district board; and in case the board shall be disorganized, such employment shall be by the board of such county.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-189.

46-190 Discontinuance of district; assets of district used to pay debts; procedure; unused funds; distribution.

After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from such sale, together with such other funds as such district may have, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district, but shall in no case pay more than the market value of such outstanding bonds with interest up to the time of payment. In cases when bonds not yet due cannot be redeemed by reason of the refusal of the owner thereof to surrender them before due, the board may invest the surplus money of the district, after paying all debts that can be paid, in state, county, or other safe bonds, bearing the same or greater rate of interest, if possible, than the district bonds thus outstanding, for the purpose of paying such outstanding bonds of the district when due. In case the amount realized from the sale of such district property, together with other money of the district, is insufficient for the payment of all the indebtedness of the district, assessments shall continue to be made against the lands included in the district in the manner provided by law for assessments to pay bonds and other indebtedness of irrigation districts until a sufficient amount is raised to fully pay all obligations of such district.

Any balance of funds remaining after the sale or disposition of all property belonging to the district and after all obligations and indebtedness of the district have been paid or discharged shall be distributed by the county treasurer to all assessment payers of the district of record as of the date of the filing in the office of the Department of Natural Resources of the report referred to in section 46-192. Such distribution shall be made pro rata in accordance with the number of acres of irrigable land owned within the district as of the date of the last assessment against such land for the district prior to the date of the filing of such report.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-190; Laws 1979, LB 66, § 1; Laws 2000, LB 900, § 88.

In tax sale foreclosure, property remains liable for payment of future assessments by irrigation district to discharge irrigation bonds. County of Garden v. Schaaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

46-191 Discontinuance of district; obligations incurred after April 8, 1903; subject to redemption upon discontinuance.

In all cases where bonds and other obligations of irrigation districts were issued after April 8, 1903, such bonds and obligations shall become subject to redemption by the board of directors of any irrigation district, as soon as the

property and franchise of such district shall be sold after such district has elected to discontinue as a district, as herein provided.

Source: Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-191.

46-192 Discontinuance of district; final report by board; property rights; disposition; claims barred after one year.

After all the property of the district is disposed of as provided in sections 46-186 to 46-188, except for any balance of funds remaining after all of the obligations of such district have been paid, the directors of such district shall file in the office of the county clerk of each county in which such district is located, and in the office of the Department of Natural Resources, a report attested by the secretary of the board, stating that the district has disposed of its property and franchises, except for any balance of funds remaining, and has discontinued operation, which report shall be recorded in the miscellaneous record of such counties. Each easement and right-of-way, whether owned by the district in fee or otherwise, shall automatically be terminated and extinguished and such interest together with any canal or other structure shall become the property of the owner of the land upon which such easement, right-of-way, canal, or other structure is located or, if owned in fee by the district, shall become the property of the owner of the land adjacent thereto, upon the filing of the report with the department. If any person has any claim against such district which is not settled or disposed of at the time of the filing of such report and such person fails or neglects to bring suit upon such claim within one year after the time of the filing of such report, such claim or claims shall be forever barred as against such district as well as against all persons and property therein.

Source: Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-192; Laws 1979, LB 66, § 2; Laws 2000, LB 900, § 89.

(I) BONDS

46-193 Plan of operation; construction work; survey and estimate; report by Director of Natural Resources.

As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its record, formulate a general plan of its proposed operation in which it shall state (1) what constructed works or other property it proposes to purchase and the cost of purchasing the same and (2) what construction work it proposes to do and how it proposes to raise the funds for carrying out such plan. For the purpose of ascertaining the cost of any such construction work, the board shall cause such surveys, examinations, and plans to be made as will demonstrate the practicability of such plan and furnish the proper basis for an estimate of the costs of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the direction of a competent irrigation engineer and certified by the engineer. The board shall then submit a copy of the same to the Director of Natural Resources within ninety days thereafter, who shall file a report upon the same

with the board, which report shall contain such matters as in the judgment of the director may be desirable.

Source: Laws 1909, c. 155, § 2, p. 561; Laws 1911, c. 160, § 1, p. 529; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-193; Laws 2000, LB 900, § 90.

Refusal of district court to validate issue of bonds of irrigation district was sustained, because feasible plan of irrigation was not presented. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

District may employ engineer to survey and make plans. Such work is preliminary and paid out of construction fund. *Willow Springs Irr. Dist. v. Wilson*, 74 Neb. 269, 104 N.W. 165 (1905).

46-194 Plan of operation; construction work; bonds; issuance; special election; notice; procedure.

Upon receiving the report, the board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereupon call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by section 46-102, the question of whether or not the bonds of such district shall be issued and the amount so determined; *Provided*, such bonds shall not be issued for more than the actual estimated cost of such ditches, the purchase price of ditches, the cost of construction work, all as contained in its general plan of operation, as well as the first year's interest upon such bond issue. Notice of such election must be given by posting notice in three public places in each election precinct in the district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and the election must be held, and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-111 to 46-118 governing the election of officers; *Provided*, no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words, Bonds Yes, or Bonds No, or words equivalent thereto.

Source: Laws 1895, c. 70, § 13, p. 278; Laws 1903, c. 122, § 1, p. 622; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 529; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-194.

Cross References

Bonds of indebtedness:

Registration, see section 10-209.

Suit on, state made party, when, see section 25-21,201.

No specific requirement is made as to the form of notice to be given to the electors. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

Bonds issued hereunder are classed as construction bonds as distinguished from refinance bonds. *State ex rel. Brown v. Taylor*, 125 Neb. 228, 249 N.W. 586 (1933).

46-195 Bonds; schedule of maturity.

If a majority of the votes cast are in favor of issuing such bonds, the board of directors shall immediately cause bonds in such amount to be issued. The bonds shall be payable in lawful money of the United States, as follows: At the expiration of eleven years not less than five percent of the bonds; at the expiration of twelve years, not less than six percent; at the expiration of thirteen years, not less than seven percent; at the expiration of fourteen years, not less

than eight percent; at the expiration of fifteen years, not less than nine percent; at the expiration of sixteen years, not less than ten percent; at the expiration of seventeen years, not less than eleven percent; at the expiration of eighteen years, not less than thirteen percent; at the expiration of nineteen years, not less than fifteen percent; and for the twentieth year a percentage sufficient to pay off the bonds. Any such district may by a majority vote provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof in installments at the same ratio as above provided. The district may also, at its option, redeem any bonds issued at any time on or after five years from the date of issuance thereof.

Source: Laws 1895, c. 70, § 13, p. 279; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 530; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-195; Laws 1947, c. 15, § 17, p. 92.

Cross References

Other provisions for payment of bonds, see section 10-126.

46-196 Bonds; interest; dates and place of payment.

Such bonds shall bear interest payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the office of the treasurer of the county in which the district originally organized.

Source: Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-196; Laws 1969, c. 51, § 111, p. 341.

46-197 Bonds; form; contents.

The bonds shall be each of the denomination of not less than one hundred dollars or more than five hundred dollars, negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. They shall be numbered consecutively as issued and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president and secretary. The bonds shall express on their face that they were issued by the authority of Chapter 46, article 1. Each bond shall be made payable at the given time for its entire amount, and the bonds shall be issued in series only, each series being payable at the expiration of a certain number of years.

Source: Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-197; Laws 1995, LB 589, § 9.

Bonds issued in violation of requirement that they shall be signed by president and secretary and have seal affixed are void, and payment of interest does not ratify them. Paxton Irr. Dist. v. Conway, 94 Neb. 205, 142 N.W. 797 (1913).

46-198 Bonds; record; interest on coupons; special election; procedures.

The secretary shall keep a record of the bonds sold, their number, date of sale, the prices received, and the name of the purchaser. Such district, by a majority vote, may provide and authorize the payment of interest on any or all due and unpaid interest coupons attached to valid and outstanding bonds of

such district heretofore or hereafter issued and sold, from the date of registration of such interest coupons for payment or if previously registered, then from the date of such election to pay such interest, until paid. Such question may be submitted at any general or special election of the district by ballot, which shall generally describe the bonds to which such coupons are attached upon which such interest is to be paid, by number, series, and date of issue, and such ballots shall be in substantially the following form: For the payment of interest on coupons attached to bonds numbered ... series ... dated ... at ... percent per annum. Yes (), No (). Such election shall be governed by the laws in force relating to bond elections in such districts, and if a majority of the ballots cast on such proposition shall be in favor thereof the board of directors shall declare the same adopted, and the funds to pay such interest shall be estimated and included in the levy for the bond fund of such irrigation district as provided by law. Thereafter, upon the presentation of any bond with coupons attached, or any detached coupons of such bonds, upon which interest is payable under the provisions of this section, the treasurer shall stamp or write on such coupons "bears interest at ... percent per annum from the registration for payment (or if previously registered for payment, then from date of election to pay interest).

.....
County Treasurer."

Payment of such coupon shall include the payment of the interest accruing under this section.

Source: Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-198; Laws 1969, c. 51, § 112, p. 342.

46-199 Construction work; annual report by board of directors; duty of Director of Natural Resources.

At least as often as once a year after organization, the board of directors shall make a report to the Director of Natural Resources of the condition of the work of construction, as to capacity, stability, and permanency, whether or not the plan of irrigation formulated under section 46-193 is being successfully carried out, and whether or not, in the opinion of the board, the funds available will complete the proposed works. Upon the receipt of such report by the Director of Natural Resources, he or she shall make such suggestions and recommendations to such board of directors as he or she may deem advisable for the best interest of the district.

Source: Laws 1909, c. 155, § 2, p. 564; Laws 1911, c. 160, § 1, p. 532; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S. 1943, § 46-199; Laws 2000, LB 900, § 91.

46-1,100 Bonds; sale; notice; procedure.

The board may sell such bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction of such canals and works, the acquisition of property and rights and otherwise to fully carry out the object and purposes of sections 46-101 to 46-1,111. Before making any sale, the board shall at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes,

and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in each of the cities of Omaha and Lincoln, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; *Provided, however*, that if no bids have been received or submitted up to such time, the board may proceed to negotiate for the sale of the bonds, and may adjourn to some specific date, from time to time, or to convene at the call of the president, to consider such negotiations and all subsequent or new proposals, and may at such adjourned meeting, award the purchase of the bonds, or a portion thereof, to the highest responsible bidder submitting proposals thereat, or may reject all bids; *Provided, however*, that the board shall in no event sell any of the bonds for less than ninety percent of the face value thereof.

Source: Laws 1895, c. 70, § 14, p. 280; R.S.1913, § 3470; C.S.1922, § 2870; Laws 1923, c. 96, § 1, p. 243; C.S.1929, § 46-114; R.S.1943, § 46-1,100.

46-1,101 Bonds; how paid; assessments.

Such bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district and all the real property of the district shall be and remain liable to be assessed for such payments as herein provided, and for all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in section 46-126.

Source: Laws 1895, c. 70, § 15, p. 281; R.S.1913, § 3471; Laws 1915, c. 69, § 4, p. 175; C.S.1922, § 2871; C.S.1929, § 46-116; R.S.1943, § 46-1,101.

All real property within district remains liable for annual assessments until bonds have been paid. *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945).

ing city lots. *Erickson v. Nine Mile Irr. Dist.*, 109 Neb. 189, 190 N.W. 573 (1922).

All real property within district is subject to taxation in favor of bondholders, notwithstanding subsequent legislation exempt-

46-1,102 Bonds; issuance and sale; judicial approval required.

The board of directors of an irrigation district organized under the provisions of sections 46-101 to 46-128 shall, before issuing and before selling any bonds of such irrigation district, commence a special proceeding, in and by which the proceedings of the board and of the district providing for and authorizing the issue and sale of the bonds of the district shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

Source: Laws 1895, c. 70, § 59, p. 302; Laws 1909, c. 159, § 1, p. 571; Laws 1913, c. 142, § 4, p. 347; R.S.1913, § 3515; C.S.1922, § 2915; C.S.1929, § 46-160; R.S.1943, § 46-1,102.

Confirmation of issuance of bonds was a special proceeding in rem. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

mation Dist. v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Provision of Reclamation Act for confirmation of validity of reclamation district was similar to the procedure provided by this and succeeding three sections. *Nebraska Mid-State Recla-*

Proceeding under this section is in rem and cannot be collaterally attacked, but confirmation of exchange of bonds for property is not authorized. *Wyman v. Searle*, 88 Neb. 26, 128 N.W. 801 (1910).

46-1,103 Bonds; judicial approval; petition; contents.

The board of directors of the irrigation district or such holder or holders of any bond or bonds of the district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of the bonds, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district or the election of the first board of directors.

Source: Laws 1895, c. 70, § 60, p. 302; Laws 1909, c. 159, § 1, p. 571; R.S.1913, § 3516; C.S.1922, § 2916; C.S.1929, § 46-161; R.S. 1943, § 46-1,103.

46-1,104 Bonds; judicial approval; hearing; notice; form; contents.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given and published in the same manner and for the same length of time that the notice of a special election provided for by law to determine whether the bonds of the district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition and prayer of the petition, and that any person interested in the organization of the district, or in the proceedings for the issue or sale of the bonds, may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of (giving its name), praying that the proceedings for the issue and sale of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1895, c. 70, § 61, p. 302; Laws 1909, c. 159, § 1, p. 572; R.S.1913, § 3517; C.S.1922, § 2917; C.S.1929, § 46-162; R.S. 1943, § 46-1,104.

46-1,105 Bonds; judicial approval; parties; motions and answers; rules applicable.

Any person interested in the district, or in the issue or sale of the bonds, may move to dismiss the petition or answer thereto. The provisions of the code of civil procedure respecting motions and answer to a complaint shall be applicable to motions and answer to the petition. The persons so filing motion and answering the petition shall be the defendants to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceeding, be taken as true; and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections 46-101 to 46-1,111 are applicable to the special proceeding herein provided for.

Source: Laws 1895, c. 70, § 62, p. 303; R.S.1913, § 3518; C.S.1922, § 2918; C.S.1929, § 46-163; R.S.1943, § 46-1,105.

46-1,106 Bonds; judicial approval; determination of legality; procedure.

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections 46-101 to 46-128, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of the bonds and the order of the sale and the sale thereof. The court in inquiring into the regularity, legality, or correctness of such proceedings shall disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings, and it may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in section 46-1,104. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district legal and valid and the proceedings for the voting and issuing of the bonds legal and valid, the board of directors shall then prepare a written statement beginning with the filing of the petition for the organization of the district, and including all subsequent proceedings for the organization of the district and voting and issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of directors of the district.

Source: Laws 1895, c. 70, § 63, p. 303; Laws 1913, c. 142, § 5, p. 348; R.S.1913, § 3519; Laws 1917, c. 8, § 1, p. 63; C.S.1922, § 2919; C.S.1929, § 46-164; Laws 1933, c. 141, § 2, p. 551; C.S.Supp.,1941, § 46-164; R.S.1943, § 46-1,106; Laws 2001, LB 420, § 30.

Approval of contract with United States and approval of bonds were proper in one proceeding. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Refusal of district court to validate bonds of irrigation district was sustained where no feasible plan of irrigation was presented. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

46-1,107 Water supply from outside the state; power of district to acquire; contracts; bonds.

When any district organized under sections 46-101 to 46-128 shall find it necessary to procure and acquire the supply of water necessary for any or all ditches outside of the boundaries of this state, and from some adjoining state, then in such event it shall be lawful for such district to contract or bargain with any person, company or corporation legally existing within such state, outside of the boundaries of this state, for the required supply of such necessary water for the district within the state. The voting, issuance and sale of bonds in such district within the state for the payment of such rights and franchises of such persons, companies or corporations of such foreign state, for the use and benefit of such district within this state, shall be deemed valid and of full force and effect and have the same operation as though the same rights and franchises existed wholly within this state.

Source: Laws 1895, c. 70, § 64, p. 304; R.S.1913, § 3520; C.S.1922, § 2920; C.S.1929, § 46-165; R.S.1943, § 46-1,107.

46-1,108 Bonds; refunding; reissue.

The board of directors of any irrigation district in the State of Nebraska which has issued valid interest-bearing bonds that are outstanding and unpaid, may take up and pay off any such bonds whenever the same can be brought about by lawful means, by the issue and sale or the issue and exchange therefor of the bonds of such irrigation district; but bonds so to be issued shall not exceed the amount lawfully owing and unpaid upon the bond or bonds so sought to be taken up and paid. Bonds so issued shall not bear interest greater in rate or amount per annum than the bonds so sought to be taken up and paid.

Source: Laws 1909, c. 158, § 1, p. 569; R.S.1913, § 3522; C.S.1922, § 2922; C.S.1929, § 46-167; R.S.1943, § 46-1,108.

46-1,109 Bonds; refunding; conditions for issuance; procedure; notice; form; contents; action of board when no objections filed.

Whenever it is desired to issue bonds under section 46-1,108, the board of directors shall, by resolution entered in the minutes of its proceedings, direct public notice to be given, stating the amount of the indebtedness sought to be taken up and paid, the date it was voted, the rate of interest it bears, and that the same is sought to be taken up and paid off by the issuance and sale, or the issuance and exchange of bonds bearing interest at an equal or less rate and amount per annum, and stating the date on which and the place where any taxpayer of such irrigation district may file objections to such proposed action. Such notice shall be signed by the president and secretary of the irrigation district, and shall be published for two weeks in some newspaper in general circulation in the district, or by posting the notice in three of the most public places in the district for at least fifteen days prior to such date. If after such publication and on the day for filing objections, no objections to such action by the board of directors are filed, then the board of directors may issue and sell, or exchange, as the case may be, the bonds authorized by section 46-1,108, not exceeding the amount stated in such notice, nor exceeding the amount of actual bonded indebtedness of the district then outstanding and unpaid, nor bearing interest greater in rate or amount, and thereby take up and pay off the bonds described in the notice.

Source: Laws 1909, c. 158, § 2, p. 569; R.S.1913, § 3523; C.S.1922, § 2923; C.S.1929, § 46-168; R.S.1943, § 46-1,109.

46-1,110 Bonds; refunding; hearing on objections; appeal.

If on the day appointed in such notice, any written objections be filed, the objection or objections shall be heard and decided by the board of directors, and from its decision an appeal may be taken to the district court, in the manner of appeals from the county board.

Source: Laws 1909, c. 158, § 3, p. 570; R.S.1913, § 3524; C.S.1922, § 2924; C.S.1929, § 46-169; R.S.1943, § 46-1,110.

46-1,111 Bonds; refunding; recitals required; delivery; payment; laws applicable.

The bonds so issued shall have recited therein the object of issue, the title of the article under which the issue was made, stating the issue to be made in pursuance thereof, and shall also state the number, date, and amount of the

bonds for which it is substituted. Such new bonds shall not be delivered until the surrender of the bond or bonds so designated, and they shall be paid, and levy made and tax collected for their payment, in accordance with laws governing the bonds heretofore issued.

Source: Laws 1909, c. 158, § 4, p. 570; R.S.1913, § 3525; C.S.1922, § 2925; C.S.1929, § 46-170; R.S.1943, § 46-1,111.

46-1,112 Bonds; interest; extension of maturity; refunding; conditions; requirements.

Any irrigation district in this state having valid and unpaid bonds outstanding may by contract with the owners or holders thereof, or by other lawful means, provide for the extension of the time of payment thereof for any period not exceeding forty years, and may provide for the payment annually or semiannually of any rate of interest and for the payment of both principal and interest as one sum in any desired percentage per annum. Such district may also provide for the payment or refunding of such bonds by the issue and sale or the issue and exchange therefor of bonds maturing in any period not exceeding forty years, in an amount equal to the principal debt and the total interest to accrue thereon during the term of the bond at any agreed rate, and may make such bonds payable in installments equal to two percent of the principal and interest each year for the first four years; four percent of the principal and interest each year for the next two years; and six percent of the principal and interest each year for the next fourteen years; or if the bond term be more than twenty years, then in substantially proportionate installments.

Source: Laws 1917, c. 190, § 1, p. 463; C.S.1922, § 2930; C.S.1929, § 46-175; R.S.1943, § 46-1,112; Laws 1969, c. 51, § 113, p. 343.

46-1,113 Bonds; extension of maturity; refunding; election required, when; procedure; laws applicable.

No bonds shall be issued or contract entered into under the provisions of section 46-1,112 unless the same shall be authorized by a majority vote of the electors of such district at any general or special election held in such district. Such election shall be held pursuant to resolution of the board of directors calling the same, and the provisions of law governing the holding of elections to vote bonds in irrigation districts are hereby made applicable to elections held under this section.

Source: Laws 1917, c. 190, § 2, p. 464; C.S.1922, § 2931; C.S.1929, § 46-176; R.S.1943, § 46-1,113.

46-1,114 Irrigation districts; grant of additional powers.

In addition to all other powers, an irrigation district shall have the powers granted in sections 46-1,115 to 46-1,126.

Source: Laws 1925, c. 128, § 1, p. 336; C.S.1929, § 46-178; R.S.1943, § 46-1,114.

Refinancing bonds and coupons of irrigation district issued hereunder, when due and funds are available for that purpose on presentment, are payable by county treasurer in order of presentment by holder thereof. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-1,115 Bonds in discharge of judgments; power to issue; limit.

An irrigation district shall have power to issue bonds in consideration of the discharge of judgments held against it in an amount not exceeding by more

than one thousand dollars the principal and interest of judgments so discharged.

Source: Laws 1925, c. 128, § 2, p. 336; C.S.1929, § 46-179; R.S.1943, § 46-1,115.

46-1,116 Bonds; issuance to procure surrender of outstanding bonds; power of district; limit.

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding bonds. If the bonds surrendered provide for the separate payment of principal and interest, the principal of the bonds to be issued shall not exceed by more than one thousand dollars the principal of the bonds surrendered. If the bonds surrendered provide for the payment of principal and interest combined in installments, the principal of the bonds issued shall not exceed by more than one thousand dollars the value of such installments discounted at the same rate per year as the annual interest rate of the bonds to be issued.

Source: Laws 1925, c. 128, § 3, p. 336; C.S.1929, § 46-180; R.S.1943, § 46-1,116.

46-1,117 Bonds; issuance to procure surrender of notes and warrants; power of district; limit.

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding notes and warrants in an amount not exceeding by more than one thousand dollars the principal and interest of the notes and warrants surrendered.

Source: Laws 1925, c. 128, § 4, p. 336; C.S.1929, § 46-181; R.S.1943, § 46-1,117.

46-1,118 Bonds; issuance for more than one purpose.

One issue of bonds may be for any or all the purposes mentioned in sections 46-1,115 to 46-1,117.

Source: Laws 1925, c. 128, § 5, p. 337; C.S.1929, § 46-182; R.S.1943, § 46-1,118.

46-1,119 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; maturity; interest; redemption.

The bonds issued in pursuance of sections 46-1,115 to 46-1,118 shall mature in not exceeding fifty years, shall bear interest, payable semiannually, and may be subject to redemption before maturity at par and accrued interest at the option of the district on such terms and subject to such limitations as may be provided, and shall be in such denominations and form, with or without interest coupons, and be executed in such manner as may be provided. In case default shall be made in the payment of interest, such interest shall bear interest at the same rate as the principal.

Source: Laws 1925, c. 128, § 6, p. 337; C.S.1929, § 46-183; R.S.1943, § 46-1,119; Laws 1969, c. 51, § 114, p. 343.

Where holders of bonds or coupons present them when due for payment and payment is refused for want of funds, such presentment and demand does not entitle demandants to priority of payment over holders of bonds and coupons who subsequently present same for payment when funds are available.

State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-1,120 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contract with holders, authorized; terms.

As part of the consideration for accepting new bonds in lieu of judgments, notes, warrants or bonds, and in order to induce the owners of judgments and holders of notes, warrants, and bonds to accept such new bonds, a district shall have power to make a contract with the holders of the new bonds, in the manner hereinafter provided, wherein and whereby the district may agree (1) to establish a special bond fund and to apply the money therein only to the payment of such indebtedness as may be provided, and to pay into the special bond fund such money and taxes, levied and to be levied, as may be provided, including unpaid taxes levied for general expenses of the district as well as taxes levied for the payment of bonds; (2) to levy taxes in such years and in such amounts for the special bond fund as may be provided, and to levy taxes to meet deficits due to the failure to collect taxes levied for or payable into the special bond fund and that the amount of such deficits and the amount of taxes to be levied therefor, shall be computed in such manner as may be provided; and taxes agreed to be levied shall not be subject to any limitation of law as to the amount or rate thereof; and (3) to borrow money for the special bond fund on notes or otherwise against delinquent taxes in the fund, and to pay such loans in such manner as may be provided.

Source: Laws 1925, c. 128, § 7, p. 337; C.S.1929, § 46-184; R.S.1943, § 46-1,120.

46-1,121 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; powers to be exercised by resolution; contents.

In order to exercise the powers granted by sections 46-1,114 to 46-1,120 the board of directors shall adopt a resolution which shall (1) set forth the judgments to be discharged and the notes and warrants and bonds to be canceled for which bonds are to be issued; (2) authorize the issuance of bonds of the district in place of such judgments, bonds, notes and warrants, and determine the principal amount of the bonds authorized, their maturities, interest rate, interest payment dates, and in substance the terms of and limitations on the right of redemption thereof, if any, subject to the provisions of sections 46-1,114 to 46-1,126; (3) fix the date as of which settlement shall be made, and provide for such cash adjustments of principal and interest as may be necessary at the time of the actual delivery of the bonds; and (4) state the agreements, if any, to be made by the district as authorized by section 46-1,120.

Source: Laws 1925, c. 128, § 8, p. 338; C.S.1929, § 46-185; R.S.1943, § 46-1,121.

46-1,122 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; special election required; notice; form and contents; effect of affirmative vote.

The board of directors shall then call a special election. Notice of such election shall be given by posting notice in three public places in each election precinct in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three

successive weeks. Such notice must specify the time of holding the election and that the purpose of the election is to decide for or against the approval of a resolution of the board of directors providing for the issuance of bonds, stating the principal amount, in place of existing indebtedness of the district. The election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-109 to 46-115 governing the election of officers; *Provided*, no informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words Bond Resolution Yes, and Bond Resolution No, or words equivalent thereto. If a majority of the votes cast are Bond Resolution Yes, the resolution adopted by the board of directors shall become effective, and the board shall then be authorized to pass such supplemental resolutions and do such acts and things not inconsistent with this section and the resolution as may be necessary or convenient to carry out the provisions of the resolution.

Source: Laws 1925, c. 128, § 9, p. 338; C.S.1929, § 46-186; R.S.1943, § 46-1,122.

46-1,123 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; procedure where less than all outstanding are offered.

In case within the time therefor set by the board of directors the amount of judgments proposed to be discharged and the amount of notes, warrants and bonds proposed to be surrendered shall not be offered for discharge or surrender, the board of directors may nevertheless accept the discharge of judgments and the surrender of the notes, warrants and bonds which may be offered, and may issue a proportionately less amount of the new bonds, selecting in their discretion which of the new bonds shall in that case be issued, so that the bonds issued will mature in such years as will best suit the needs of the district.

Source: Laws 1925, c. 128, § 10, p. 339; C.S.1929, § 46-187; R.S.1943, § 46-1,123.

46-1,124 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; resolution; contracts; effect.

Upon the discharge of the judgments and the surrender of the notes, warrants and bonds, and the issuance of the new bonds, the resolution approved by the electors shall constitute a contract with the holders of the bonds, and all facts therein recited shall conclusively be deemed to be true as against the district and in favor of the holders of the bonds. A recital in the bonds that they are issued in pursuance of sections 46-1,114 to 46-1,126 shall be conclusive evidence that such bonds are valid and the same shall be incontestable.

Source: Laws 1925, c. 128, § 11, p. 339; C.S.1929, § 46-188; R.S.1943, § 46-1,124.

46-1,125 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contracts; duties of public officers.

After the making of a contract and the issuance of bonds as herein authorized in sections 46-1,114 to 46-1,126, it shall be the duty of all district and county

officials, and such officials are hereby authorized and directed, to do and perform all such acts and things within the powers of their respective offices as may be necessary or convenient to cause the district to carry out and fully perform the obligations of such contract and bonds, including, among other things not specified, the levying and collecting of taxes, the disposition of the money of the district, the application and transfer of funds, the borrowing of money, and the payment of bonds and other obligations. In the absence of any provision of law specifying the officer by which and the manner in which any act or thing required by any such contract shall be done or performed the board of directors shall have full power and authority to determine the matter.

Source: Laws 1925, c. 128, § 12, p. 340; C.S.1929, § 46-189; R.S.1943, § 46-1,125.

46-1,126 Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; rights of creditors not consenting.

Any contractual obligation entered into by a district in pursuance of sections 46-1,114 to 46-1,126 shall not impair the rights of any creditor of the district who does not consent thereto by accepting the bonds issued in pursuance of said sections, and in case the district shall default in the payment of any debt owing to any such creditor the rights and remedies of such creditor shall be the same as though the contractual obligations hereby authorized had not been entered into.

Source: Laws 1925, c. 128, § 13, p. 340; C.S.1929, § 46-190; R.S.1943, § 46-1,126.

46-1,127 Bonds; sinking fund; how provided.

The board of directors of any irrigation district in the State of Nebraska, if it considers it for the best interest of such district, shall have the power to provide a sinking fund with which to pay and retire outstanding bonds of the district. For the purpose of creating, establishing, and maintaining such fund, such board may levy a tax each year of not to exceed eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district as fixed by the district assessor. Following such levy, the board may by contract with the owners of such bonds pay and retire any bonds of the district and interest accrued thereon, whether such bonds are due and payable or not.

Source: Laws 1921, c. 283, § 1, p. 928; C.S.1922, § 2938; C.S.1929, § 46-196; R.S.1943, § 46-1,127; Laws 1953, c. 287, § 64, p. 968; Laws 1979, LB 187, § 170; Laws 1992, LB 719A, § 150.

(m) SALE OF REAL ESTATE

46-1,128 Irrigation or drainage districts; sale of real estate; procedure.

An irrigation or drainage district which owns or hereafter may acquire the title to any real estate which is no longer needed by such irrigation or drainage district may sell and convey the same when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district, but nothing contained in sections 46-1,128 to 46-1,132 shall require any irrigation or

drainage district which shall have more than five hundred qualified electors residing within it to comply with the requirements of sections 46-1,128 to 46-1,132. Such districts having more than five hundred qualified electors may sell and convey real estate which is no longer needed at public auction as hereafter provided in this section. Prior to any such sale, the real estate shall be appraised for sale purposes by a qualified appraiser who shall be appointed by the governing board of the district. Such real estate shall not be sold for less than the appraised value, which shall be the starting bid price at the public sale. Notice of such sale shall be given by publication three consecutive weeks in some legal newspaper published in the county where the real estate is located; *Provided*, sale at public auction or appraisal shall not be required if the sale is to be made to a governmental subdivision or the State of Nebraska, and in such instance only notice of the sale, as provided for in this section, shall be required.

Source: Laws 1921, c. 257, § 1, p. 870; C.S.1922, § 2933; C.S.1929, § 46-191; R.S.1943, § 46-1,128; Laws 1969, c. 384, § 1, p. 1352.

46-1,129 Sale of real estate; election; notice; form; contents.

Notice of such election shall be given by posting notice in three public places in each of the election precincts in the election district for at least twenty days and also by publication of such notice in a legal newspaper published or of general circulation in the county where the office of the board of directors is kept, once each week for three consecutive weeks. Such notice shall specify the time and place of holding the election in such district and shall contain a brief summary of the proposition involving the proposed conveyance.

Source: Laws 1921, c. 257, § 2, p. 870; C.S.1922, § 2934; C.S.1929, § 46-192; R.S.1943, § 46-1,129; Laws 1986, LB 960, § 31.

46-1,130 Sale of real estate; election; results; determination.

Such election shall be held and the results thereof determined and declared in conformity with the law governing the election of officers in such district as nearly as may be practicable; *Provided*, that no irregularity in the conduct of such an election, due to an error or omission, shall invalidate the same if the election shall have been otherwise fairly conducted.

Source: Laws 1921, c. 257, § 3, p. 871; C.S.1922, § 2935; C.S.1929, § 46-193; R.S.1943, § 46-1,130.

46-1,131 Sale of real estate; notice.

At least thirty days' notice of the terms of sale, with description of property to be sold, shall be given by publication in some newspaper published in the county in which the office of the board of directors is located, or if no newspaper is published in the county then by posting in at least four public places within such district.

Source: Laws 1921, c. 257, § 4, p. 871; C.S.1922, § 2936; C.S.1929, § 46-194; R.S.1943, § 46-1,131.

46-1,132 Sale of real estate; bids; acceptance; conveyance; form.

The sale shall be by sealed bids. The directors may reject any and all bids and readvertise, if in their judgment it is for the best interest of the district. Upon

approval of the sale, by a two-thirds vote of the board of directors of the district, the president of the board of directors shall in the name of the irrigation or drainage district execute and deliver a deed or contract to the purchaser, which deed or contract shall be attested by the secretary, and the seal of the irrigation or drainage district shall be affixed thereto.

Source: Laws 1921, c. 257, § 5, p. 871; C.S.1922, § 2937; C.S.1929, § 46-195; R.S.1943, § 46-1,132; Laws 1971, LB 653, § 4.

(n) TAXABLE LANDS

46-1,133 Irrigation districts; public lands; taxation; rights and obligations of entrymen.

Whenever irrigation districts incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within the corporate boundaries public lands of the United States, whether entered or unentered, the board of directors is authorized to make such representations and assurances to the Secretary of the Interior as may be required in order to comply with the Act of Congress approved August 11, 1916, and entitled An act to promote reclamation of arid land, and related acts of Congress. Upon compliance therewith, the entrymen within such district shall be entitled to all the privileges of private landowners including the right to vote and to hold office, and with respect to irrigation districts wherein irrigable public lands are located the terms electors and owners shall be so construed as to include entrymen of such public lands. The public lands of the district included as aforesaid shall be subject to irrigation district taxation in the same manner as the private lands of the district to the extent authorized by the aforesaid or other acts of Congress, and in accordance with the laws governing irrigation districts heretofore or hereafter enacted.

Source: Laws 1917, c. 195, § 1, p. 470; C.S.1922, § 2929; C.S.1929, § 46-174; R.S.1943, § 46-1,133.

46-1,134 Irrigation districts; excluded lands not taxable.

No irrigation district, company or corporation shall include within its district for purposes of levying taxes, bonds or assessments any land which has formerly been set out of the district, unless the owner of such lands shall consent to have his land thus reinstated in the district.

Source: Laws 1917, c. 197, § 1, p. 472; C.S.1922, § 2941; C.S.1929, § 46-199; R.S.1943, § 46-1,134.

(o) SUBDIVIDED LANDS

46-1,135 Rights of grantees of subdivided lands.

Where land within an irrigation district, to which water has been delivered through adequate facilities provided by such irrigation district, is subdivided and transferred in part, the grantee or transferee shall have the right to use laterals and other existing facilities as against his grantor or assignor unless agreed otherwise, which agreement must be expressly stated in the deed of conveyance or transfer.

Source: Laws 1933, c. 89, § 1, p. 360; C.S.Supp.,1941, § 46-1,102; R.S. 1943, § 46-1,135.

“Facilities” under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning of the statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

Grantee of subdivided land previously irrigated by flooding from canal on portion of land retained by grantor or assignor

held not entitled under this section to continue the flood irrigation from the canal. Where grantee’s quarter had been irrigated from farm pond fed by lateral extending from canal on other quarter before property was subdivided, grantee held entitled under this section to continue use of lateral to irrigate his quarter. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

46-1,136 Subdivided lands; additional facilities; no obligation to furnish.

An irrigation district within which subdivided land is situated, shall not be required to build additional laterals or provide other facilities for the purpose of delivering water to such subdivided land, but shall only be required to deliver water for the irrigation of such subdivided land through the laterals or other facilities in existence before such transfer or subdivision was made.

Source: Laws 1933, c. 89, § 2, p. 360; C.S.Supp.,1941, § 46-1,103; R.S. 1943, § 46-1,136.

“Facilities” under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning of the

statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

(p) TOLLS

46-1,137 Tolls; collection authorized.

When the governing authority of any irrigation district of this state elects to collect funds for the operation and maintenance of irrigation works or repayment of contracts of construction by and between the United States of America and any irrigation district as provided in section 46-126, by the levy of tolls or charges against the lands in such district, such tolls and charges and the time of payment thereof shall be levied and fixed by the rules and regulations of such district; and the delivery of water to any parcel of land may be withheld during the time that the tolls and charges levied upon such parcel of land are delinquent and unpaid. Such tolls and charges shall be cumulative, and the delivery of water to any parcel of land may be withheld until all delinquent tolls and charges levied upon such parcel of land for the operation and maintenance of the irrigation works of such district are paid for past years as well as for the current year.

Source: Laws 1937, c. 106, § 1, p. 366; C.S.Supp.,1941, § 46-1,109; R.S.1943, § 46-1,137; Laws 1967, c. 280, § 3, p. 758.

46-1,138 Delinquent tolls; lien on real estate; manner of collection.

All such tolls and charges, due and delinquent according to the rules and regulations of such district, and unpaid on June 1 after becoming due and delinquent, may be by the governing authority of such district certified to the county clerk of such county in which are situated the lands against which such tolls and charges have been levied; and when so certified such tolls and charges shall be entered upon the tax list and spread upon the tax roll the same as other general and irrigation taxes are levied and assessed upon real estate, and shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes on such land.

Source: Laws 1937, c. 106, § 2, p. 366; C.S.Supp.,1941, § 46-1,110; R.S.1943, § 46-1,138.

(q) DEPOSIT OF DISTRICT FUNDS

46-1,139 District funds; authorized depositories.

Any irrigation district treasurer may deposit the money received or held by him or her by virtue of his or her office in some state or national bank in the State of Nebraska, capital stock financial institution, or qualifying mutual financial institution. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 1, p. 93; C.S.Supp.,1941, § 46-1,104; R.S. 1943, § 46-1,139; Laws 1989, LB 33, § 27; Laws 2001, LB 362, § 31.

46-1,140 District funds; depository designated; deposits subject to check or order.

Before such funds are deposited one or more banks, capital stock financial institutions, or qualifying mutual financial institutions shall be designated by the board of directors of the irrigation district whose funds are to be so deposited. All such deposits shall be subject to payment on check or order of the treasurer of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 2, p. 93; C.S.Supp.,1941, § 46-1,105; R.S. 1943, § 46-1,140; Laws 1989, LB 33, § 28; Laws 2001, LB 362, § 32.

46-1,141 District funds; deposits; how secured.

The depository receiving the deposit of funds of the district is hereby authorized to secure the deposit of such funds by giving security pursuant to the Public Funds Deposit Security Act, by depository bond, corporate in character, or by sufficient personal security when demanded by the board of directors of the district, such security to be approved by the board of directors of such irrigation district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 3, p. 94; C.S.Supp.,1941, § 46-1,106; R.S. 1943, § 46-1,141; Laws 1989, LB 33, § 29; Laws 1999, LB 396, § 35; Laws 2001, LB 362, § 33.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

46-1,142 District funds; treasurer not liable, when.

No treasurer of any such district shall be liable upon his bond for loss on account of any deposit in a bank which has been designated as the depository under the provisions of sections 46-1,139 to 46-1,142, and the security given by such bank has been approved by the board of directors of such district.

Source: Laws 1935, c. 18, § 4, p. 94; C.S.Supp.,1941, § 46-1,107; R.S. 1943, § 46-1,142.

(r) CONTRACTS FOR WATER SUPPLY

46-1,143 Contract for water supply authorized.

The board of directors of any irrigation district organized under the laws of this state may enter into contracts for a supply of water for the irrigation of the lands within such irrigation district with any person, firm, association, corporation or the United States of America. The source of supply of such water may be either within or without the boundaries of the State of Nebraska, and the water supply may be either the entire supply of water for such district or to supplement an appropriation already made by such district.

Source: Laws 1915, c. 205, § 1, p. 441; C.S.1922, § 2944; C.S.1929, § 46-201; R.S.1943, § 46-1,143.

Board of directors of irrigation district may contract with the United States for a supply of water. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Irrigation districts are authorized to contract with United States for water supply for irrigation of district lands. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931).

Act is complete in itself, and does not limit power of officers of district to contract with United States for supply of water under other statutory provisions. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

46-1,144 Water supply; tax levy.

If the contract mentioned in section 46-1,143 provides for payment of the entire purchase price of such water supply within one year after the making of such contract, the board of directors of such irrigation district shall at the time of entering into such contract pass a resolution that a levy shall be made sufficient to raise such sum as is necessary to pay such purchase price, and the board of directors shall thereafter, and at the same time the levy of other taxes for the district is made, levy a tax against the taxable property of the district sufficient to raise and pay such sum.

Source: Laws 1915, c. 205, § 2, p. 441; C.S.1922, § 2945; C.S.1929, § 46-202; R.S.1943, § 46-1,144.

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.

A contract for a supply of water which provides for payment to be made by an irrigation district for a period of more than one year from the date of making the contract must be approved by the legal voters of the district. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

Where sale of existing irrigation works was contemplated, notice in general of substance of contract was sufficient. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

46-1,146 Water supply contracts and bonds; rescission; when authorized.

If any irrigation district shall have heretofore, or hereafter, purchased a water supply and issued bonds in payment of the same, or shall have purchased an irrigation system, which system included a contract for water supply and issued bonds in payment of the same, the directors of the district may arrange for the surrender and rescission of such contract for water supply upon surrender and cancellation of bonds in an amount equal to the bonds issued in payment for such water supply, and if the water supply was included in the purchase price of an irrigation system the board of directors may arrange for the surrender and rescission of the contract for such water supply on the surrender and cancellation of bonds in an amount equal to the part of the purchase price that was represented by the value of such contract for water supply, such amount to be determined by the directors of the irrigation district. Upon the surrender of such contract and cancellation of bonds as hereinbefore provided, the board of directors of such irrigation district may enter into a new contract for water supply as hereinbefore provided.

Source: Laws 1915, c. 205, § 4, p. 442; C.S.1922, § 2947; C.S.1929, § 46-204; R.S.1943, § 46-1,146.

(s) FEDERAL AID

46-1,147 Irrigation districts; acceptance of federal reclamation aid.

Any irrigation district is hereby authorized to be created and is empowered to cooperate with the United States under the Act of June 17, 1902 (32 Stat. 388), known as the Federal Reclamation Act and acts amendatory thereof and supplementary thereto, for the purposes of construction of irrigation works, including drainage works, or for the purchase, extension, operation or maintenance of irrigation works, including drainage works, or for the assumption as principal or guarantor of indebtedness to the United States on account of any district lands, and in that case the district shall levy and assess the several landowners entering lands under the reclamation laws or acquiring water rights thereunder in accordance with the reclamation law, public notices and orders issued thereunder and in accordance with existing contracts made between the individual landowners and the United States and as may be contracted for between the district and the United States, and the district is hereby clothed with full taxing power to collect such sums under the revenue laws of the state as in the case of other irrigation districts; *Provided, however*, that any property acquired by the district may be conveyed to the United States insofar as the same may be needed by the United States for the construction, operation, and maintenance of works for the benefit of the district under any contract that may be entered into with the United States pursuant to this section.

Source: Laws 1917, c. 191, § 1, p. 464; C.S.1922, § 2939; C.S.1929, § 46-197; R.S.1943, § 46-1,147.

An irrigation district may enter into a contract with the United States for a water supply. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Contract executed hereunder did not establish such relationship between parties as would impute negligence of the United States or its employees to the irrigation district. Livanis v.

Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931), affirming on rehearing, 120 Neb. 314, 232 N.W. 583 (1930).

Reclamation service has power to take over and operate irrigation system, to protect its claims, without acquiring title. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

46-1,148 Payment of federal charges.

The contract provisions for the payment of construction charges to the United States and the bonds securing the payment of the same, if any be issued and deposited, may be of such denominations and may call for payment of such interest not exceeding six percent per annum, and may provide for such installments and for repayment of the principal at such times as may be required by the federal laws and as may be agreed upon between the board and the Secretary of the Interior. The contract indebtedness to the United States shall be a prior lien to any subsequent bond issue of the district.

Source: Laws 1917, c. 191, § 2, p. 465; C.S.1922, § 2940; C.S.1929, § 46-198; R.S.1943, § 46-1,148.

46-1,149 Bonds; contracts; acceptance of United States guarantee.

Any irrigation or drainage district, heretofore or hereafter organized under the laws of the State of Nebraska for irrigation or drainage purposes, is hereby authorized and empowered to enter into contract with the United States of America whereby the bonds of the district are guaranteed by the United States or financial credit is extended by the United States to the district, and for the sale, purchase or use of any canal, ditch, reservoir, rights-of-way, irrigation or drainage systems or other property owned or to be acquired for the use of such district.

Source: Laws 1915, c. 207, § 1, p. 461; C.S.1922, § 2949; C.S.1929, § 46-206; R.S.1943, § 46-1,149.

46-1,150 Acceptance of act of Congress applicable to district.

Any irrigation or drainage district organized under the laws of Nebraska is hereby authorized to accept of the provisions of any Act of Congress of the United States applicable to such district and to obligate itself to comply with such laws, rules, and regulations as may be promulgated by any department of the United States in pursuance of such acts. Irrigation or drainage districts contracting with the United States under the provisions of sections 46-1,149 and 46-1,150 shall be governed in all matters by the laws of the state relating to irrigation or drainage districts as the case may be, except in such things as may be otherwise provided for such districts.

Source: Laws 1915, c. 207, § 2, p. 461; C.S.1922, § 2950; C.S.1929, § 46-207; R.S.1943, § 46-1,150.

46-1,151 Contracts with United States; judicial approval; proceedings authorized.

The board of directors of any irrigation district heretofore or hereafter organized may, in its discretion, before or after the making of any contract with the United States or others, the levying of any assessment or the taking of any particular steps or action, commence a special proceeding in the district court of the state, in and by which the proceedings of such board and of such district

leading up to or including the making of any such contract, and the validity of any of the terms thereof, the levying of any assessment or the taking of any particular steps or action, shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

Source: Laws 1917, c. 192, § 1, p. 466; C.S.1922, § 2951; C.S.1929, § 46-208; R.S.1943, § 46-1,151.

Judicial approval of contract with the United States could be obtained in special proceeding in rem. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Action to confirm bonds is a special proceeding in rem. Frenchman-Cambridge Irr. Dist. v. Ferguson, 154 Neb. 20, 46 N.W.2d 692 (1951).

Contracts with United States for supply of water for irrigation require judicial approval. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

46-1,152 Contracts with United States; procedure for confirmation; powers of court.

The practice and procedure for the confirmation of any step or action provided for in section 46-1,151 shall be as nearly as possible in conformity with the practice and procedure provided for the confirmation before the issuance and sale of bonds of irrigation districts. The court may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible the court shall remedy and cure all defects in such proceedings.

Source: Laws 1917, c. 192, § 2, p. 466; C.S.1922, § 2952; C.S.1929, § 46-209; R.S.1943, § 46-1,152.

Practice and procedure for approval of contract with United States is provided. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

46-1,153 Contracts with United States; borrowing money to meet obligations; powers of board.

The board of directors of any irrigation district in this state sustaining contractual relations with the United States shall have the power to borrow funds for the purpose of making any necessary payments thereon and to pledge the credit of the district for the payment of the same. The board of directors of any irrigation district in this state shall have the power to borrow funds to meet the necessities of any unforeseen or unusual conditions arising in the operation and maintenance of the irrigation system of such district and to pledge the credit of such district for the payment thereof. The total sum borrowed by any district under the provisions of this section shall at no time exceed two-thirds the amount of the general fund levy of such district for the preceding year. If the levy for the then current year shall be insufficient to provide for the payment of the sum or sums so borrowed, then such payment shall be provided for in the levy for the year next ensuing.

Source: Laws 1917, c. 193, § 1, p. 467; C.S.1922, § 2953; C.S.1929, § 46-210; R.S.1943, § 46-1,153.

(t) VALIDATION ACT

46-1,154 Districts organized at least one year; proceedings validated.

In all cases in which the county board of any county has purported to establish an irrigation district situated in whole or in part within such county, and such district has acted as an irrigation district for the period of at least one

year prior to August 15, 1937, all acts and proceedings taken for the purpose of creating such district are hereby legalized, validated, and declared to be sufficient, and such irrigation district is hereby declared to be duly incorporated, and as such, said irrigation district under its corporate name shall have all the rights and privileges and be subject to all of the duties and obligations of a duly incorporated irrigation district.

Source: Laws 1937, c. 105, § 1, p. 365; C.S.Supp.,1941, § 46-1,108; R.S.1943, § 46-1,154.

(u) MERGER OF DISTRICTS

46-1,155 Merger of districts; petition; plan; contents.

Any two or more irrigation districts may merge into one district if a petition for merger signed by a majority of the board of directors of each district or signed by a majority of the electors of each district is filed with the boards of directors of the districts to be merged. Such petition shall include a plan for the merger, which plan shall contain:

- (1) A description of the proposed boundaries of the merged district and a list of lands;
- (2) A summary of the reasons for the proposed merger;
- (3) A summary of the terms on which the merger is to be made between the merged districts and such terms shall include a provision for three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and two directors shall be elected from each division;
- (4) The amount of outstanding indebtedness of each district and proposed disposition thereof;
- (5) The equitable adjustment of all property, debts, and liabilities among the districts involved;
- (6) The name of the proposed district; and
- (7) Such other matters as the petitioners determine proper to be included.

A certified copy of the petition for merger shall be filed with the Department of Natural Resources and the department shall either approve or disapprove such petition within twenty days. The boards of directors of the districts shall not take further action without such approval.

Source: Laws 1972, LB 1509, § 3; Laws 2000, LB 900, § 92.

46-1,156 Merger of districts; outstanding bonds; consent of bondholders.

If there are outstanding bonds of an irrigation district proposing to merge, or if such a district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board shall notify the holders of such outstanding bonds that a petition for merger has been filed and the holders of such outstanding bonds may give their assent in writing to the effect that they severally consent to any merger that may be approved by the district and in case of such contract with the United States, the Secretary of the Interior shall be notified that a merger of such district is proposed and the Secretary of the Interior may assent to such merger. The assents shall be filed with the boards of directors of the districts proposed to be merged and shall be recorded in the minutes of each board and such minutes, or a certified copy

thereof, shall be admissible in evidence with the same effect as an assent, but if such assent of the bondholders and, in the case of contract with the United States, such assent of the Secretary of the Interior is not filed, the board shall deny and dismiss the petition for merger.

Source: Laws 1972, LB 1509, § 4.

46-1,157 Merger of districts; approval by Department of Natural Resources.

When such plan has been approved by the Department of Natural Resources, it shall be designated as the final approved plan and shall be submitted to a vote as provided in section 46-1,158.

Source: Laws 1972, LB 1509, § 5; Laws 2000, LB 900, § 93.

46-1,158 Merger of districts; special election; notice.

Not less than thirty days nor more than sixty days after the designation of the plan as the final approved plan, the proposition of the adoption or rejection of such proposed plan of merger shall be submitted by the boards of directors at a special election to all the electors of the irrigation districts which will be affected by the merger plan. Notice of such election shall be given by posting a notice in three public places in each election precinct in each district affected by the merger for at least twenty days, and also by publication of such notice in a newspaper of general circulation in the county where the office of the board of directors of each district affected by the merger is required to be kept once a week for three successive weeks.

Source: Laws 1972, LB 1509, § 6.

46-1,159 Merger of districts; election; notice; contents.

The election notice shall:

- (1) State that the election has been called for the purpose of affording the electors an opportunity to approve or reject the plan of merger;
- (2) Contain a description of the boundary of the proposed district;
- (3) Contain a statement giving a summary of the reason for the proposed merger including a summary of the terms on which the merger is to be made, and the amount of outstanding indebtedness of each district;
- (4) State the equitable adjustments of all property, debts and liabilities among the districts involved;
- (5) State the name of the proposed district;
- (6) Contain such other matters as are set out in the merger plan;
- (7) Specify the time of holding the election; and
- (8) Name the directors of the districts to be merged who shall constitute the first board of directors of the new district.

Source: Laws 1972, LB 1509, § 7.

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.

46-1,161 Merger of districts; board of directors; term of office; election.

The directors serving on the boards of directors of such merging districts shall constitute the first board of directors of the new district if the merger is approved. Such board of directors shall determine a method of setting the terms of office, so that two directors' terms on the new board shall be for one year, two for two years and three for three years. Each year thereafter two directors shall be elected for a term of three years.

Source: Laws 1972, LB 1509, § 9.

46-1,162 Merger of districts; election; effect.

If at such election a majority of all votes cast at the election in each district are not in favor of such merger, the merger plan shall be defeated and shall not be placed in effect. If at such election a majority of all votes cast at the election in each district shall be in favor of such merger, the merger shall be effective immediately and the merged district shall assume all rights, assets and liabilities of the merged districts.

Source: Laws 1972, LB 1509, § 10.

46-1,163 Merger of districts; indebtedness; responsibility; succession to property.

Whenever two or more districts are involved in a merger plan, such districts shall continue to be responsible for any indebtedness incurred before the merger takes place unless a different arrangement is included in the plan voted upon by the electors; *Provided*, that when the voters approve such merger, the merged district shall succeed to all the property, contracts and obligations of all the districts so merged into it and shall assume all of their valid contracts and obligations.

Source: Laws 1972, LB 1509, § 11.

ARTICLE 2

GENERAL PROVISIONS

Cross References

Constitutional provisions:

Natural streams, dedicated to people, subject to right to divert unappropriated water, see Article XV, section 5, Constitution of Nebraska.

Unappropriated water, right to divert, see Article XV, section 6, Constitution of Nebraska.

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Irrigation and domestic use, natural want, see Article XV, section 4, Constitution of Nebraska.

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Department of Natural Resources, general powers and duties, see Chapter 61, article 2.

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Temporary stay of surface-water natural-flow appropriations, authority to issue, limitations, see section 2-32,115.

Sprinkler irrigation system, damaging roads prohibited, see section 39-301 et seq.

Surface water rights, notice of transfer required, when, see section 76-2,124.

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(a) PUBLIC RIGHTS

Section

- 46-201. Water for irrigation; declared natural want.
46-202. Natural streams; unappropriated water; dedication to public use;
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46-202.01. Repealed. Laws 1965, c. 271, § 3.

(b) FIRST APPROPRIATORS

- 46-203. First appropriators; declared first in right.
46-204. Natural streams; priority of appropriations; first in time, first in right;
preference from nature of use.
46-205. First appropriators; date of priority.
46-206. Appropriation; water to be returned to stream.
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(c) DEPARTMENT OF WATER RESOURCES; GENERAL POWERS AND DUTIES

- 46-208. Transferred to section 61-205.
46-209. Transferred to section 61-206.
46-210. Transferred to section 61-207.
46-211. Repealed. Laws 1984, LB 897, § 5.
46-212. Transferred to section 61-208.
46-212.01. Transferred to section 61-209.
46-212.02. Repealed. Laws 2000, LB 900, § 256.
46-213. Transferred to section 61-211.
46-214. Repealed. Laws 1981, LB 545, § 52.

(d) WATER DIVISIONS

- 46-215. Transferred to section 61-212.
46-216. Transferred to section 61-213.
46-217. Transferred to section 61-214.
46-218. Transferred to section 61-215.
46-219. Transferred to section 61-216.
46-220. Repealed. Laws 1953, c. 157, § 3.
46-221. Repealed. Laws 1953, c. 157, § 3.
46-222. Repealed. Laws 1987, LB 140, § 15.
46-223. Repealed. Laws 1987, LB 140, § 15.
46-224. Repealed. Laws 1987, LB 140, § 15.
46-225. Repealed. Laws 1953, c. 157, § 3.

(e) ADJUDICATION OF WATER RIGHTS

- 46-226. Determination of priority and amount of appropriation; duty of
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- (f) APPLICATION FOR WATER
- 46-233. Application to appropriate water; time of making; contents; procedure; priority date; notice; hearing; temporary permit; emergency use.
46-233.01. Permit to appropriate water for use in another state; application; considerations; determination.
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- 46-244. Canals; declared works of internal improvement; laws applicable.
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(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.

(a) PUBLIC RIGHTS

46-201 Water for irrigation; declared natural want.

Water for the purposes of irrigation in the State of Nebraska is hereby declared to be a natural want.

Source: Laws 1895, c. 69, § 65, p. 268; R.S.1913, § 3369; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 1, p. 831; C.S.1922, § 8406; C.S. 1929, § 46-501; R.S.1943, § 46-201.

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. Drainage Dist. No. 1 v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

State, in exercise of police power, may supervise and control the appropriation, diversion, and distribution of public waters of state, and impose that duty on administrative officers. State ex rel. Cary v. Cochran, 138 Neb. 163, 292 N.W. 239 (1940).

Under irrigation act of 1889, a water right for purposes of irrigation need not have been attached to any particular tract of land. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

Under this and other sections, legislative intent is shown to limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and requiring that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Prior to existing statutes declaring water for irrigation to be natural want, and granting preference in use of water for agriculture, appropriation for power purposes was as favorably regarded as for irrigation. Kearney Water & E. P. Co. v. Alfalfa Irr. Dist., 97 Neb. 139, 149 N.W. 363 (1914).

In view of preference given by statute to use of water for agricultural purposes, irrigation companies will not be enjoined from diverting water from lower riparian mill owner, where petition fails to allege that appropriation was unlawful. Cline v. Stock, 71 Neb. 70, 98 N.W. 454 (1904), 102 N.W. 265 (1905).

Although use of water for irrigation is declared a natural want, right to so use it must be exercised reasonably under the circumstances of each case. Meng v. Coffee, 67 Neb. 500, 93 N.W. 713 (1903).

46-202 Natural streams; unappropriated water; dedication to public use; appropriated water; further appropriation.

(1) The water of every natural stream not heretofore appropriated within the State of Nebraska, including the Missouri River, is hereby declared to be the property of the public and is dedicated to the use of the people of the state, subject to appropriation.

(2) The water of every natural stream within the State of Nebraska, including the Missouri River, appropriated for storage in a surface reservoir or for underground water storage, is hereby declared to be subject to further appropriation for recovery and beneficial use.

Source: Laws 1895, c. 69, § 42, p. 260; R.S.1913, § 3370; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 2, p. 831; C.S.1922, § 8407; C.S.

1929, § 46-502; R.S.1943, § 46-202; Laws 1963, c. 277, § 1, p. 833; Laws 1965, c. 271, § 1, p. 773; Laws 1980, LB 802, § 1; Laws 1983, LB 198, § 4.

Under former law, the right to appropriate water for irrigation purposes was limited to waters of natural streams. *Rogers v. Petsch*, 174 Neb. 313, 117 N.W.2d 771 (1962).

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. *Drainage Dist. No. 1 v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941).

This, and other sections, limit the location and construction of irrigation canals and ditches as well as the land irrigated by same to the basin containing the source of the water used, and require that all unused water shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. *State ex rel. Sorensen v. Mitchell Irr. Dist.*, 129 Neb. 586, 262 N.W. 543 (1935).

Right to use of water of natural stream acquired prior to 1895 was a vested property right which could not be taken away by

legislative action. *City of Fairbury v. Fairbury Mill & Elevator Co.*, 123 Neb. 588, 243 N.W. 774 (1932).

Right to appropriate public waters of streams of state for generating electric energy is taxable as franchise. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

Legislature did not intend by the act, of which this section is part, to interfere with prior acquired rights, but to ascertain extent of prior appropriations, and make record of them, in order to carry out law respecting subsequent appropriations. *Black Bros. Flour Mills v. Umphenour*, 111 Neb. 218, 196 N.W. 123 (1923).

Riparian owners cannot appropriate water of running streams without consent of state. *Kirk v. State Board of Irrigation*, 90 Neb. 627, 134 N.W. 167 (1912).

The establishment of an administrative system for the regulation and determination of water rights is a legitimate exercise of the police power of the state. *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 73 F.2d 555 (9th Cir. 1934).

46-202.01 Repealed. Laws 1965, c. 271, § 3.

(b) FIRST APPROPRIATORS

46-203 First appropriators; declared first in right.

As between appropriators, the one first in time is first in right.

Source: Laws 1889, c. 68, § 7, p. 504; R.S.1913, § 3371; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 3, p. 832; C.S.1922, § 8408; C.S. 1929, § 46-503; R.S.1943, § 46-203.

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. *Drainage Dist. No. 1 v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941).

Senior appropriator is entitled to water as against an upstream junior appropriator, as long as water in usable quantities can be delivered to senior appropriator. *State ex rel. Cary v. Cochran*, 138 Neb. 163, 292 N.W. 239 (1940).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior

appropriators shall be protected as against subsequent appropriators. *State ex rel. Sorensen v. Mitchell Irr. Dist.*, 129 Neb. 586, 262 N.W. 543 (1935).

While Nebraska was originally a riparian doctrine state, legislation was enacted adopting the principle of prior appropriation. *Nebraska v. Wyoming*, 325 U.S. 589 (1945).

United States cannot claim assignment to it of excess waters under an appropriation, as excess would inure to benefit of other appropriators prior in time to United States. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

46-204 Natural streams; priority of appropriations; first in time, first in right; preference from nature of use.

The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purposes, but when the waters of any natural stream are not sufficient for the use of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

Source: Laws 1895, c. 69, § 43, p. 260; R.S.1913, § 3372; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 4, p. 832; C.S.1922, § 8409; C.S. 1929, § 46-504; R.S.1943, § 46-204; Laws 1963, c. 277, § 2, p. 833; Laws 1965, c. 271, § 2, p. 773; Laws 1981, LB 252, § 1.

1. Rights of riparian owners
2. Vested rights
3. Limitations on appropriation
4. Miscellaneous

1. Rights of riparian owners

Parties who have appropriated water for irrigation purposes, and continued such use for seven years, cannot be enjoined by lower riparian owner whose mill privilege may be injured thereby. He must sue for damages. *Cline v. Stock*, 71 Neb. 70, 98 N.W. 454 (1904), 102 N.W. 265 (1905).

Riparian owner, damaged by appropriation, may recover actual damages sustained. *McCook Irr. & Water Power Co. v. Crews*, 70 Neb. 109, 96 N.W. 996 (1903).

Common-law rule, in force except as modified by statute, only gives riparian owner right to water so far as consistent with like right of all other riparian owners. Civil law is not applicable. *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

Riparian owners are entitled, in absence of grant, license, or prescription, to natural flow of water. *Plattsmouth Water Co. v. Smith*, 57 Neb. 579, 78 N.W. 275 (1899).

2. Vested rights

An appropriator of water for power purposes under act of 1877 acquired a vested right which was not affected by enactment of this section in 1895, giving preference for agricultural purposes. *Kearney Water & Electric Powers Co. v. Alfalfa Irr. Dist.*, 97 Neb. 779, 151 N.W. 319 (1915), 97 Neb. 139, 149 N.W. 363 (1914).

Completed appropriation of water for power under law of 1877 is vested right, and priority, if unchallenged, is not lost by failure to demand adjudication under law of 1895. *Gearhart & Benson v. Frenchman Valley Irr. Dist.*, 97 Neb. 764, 151 N.W. 323 (1915).

Under unrevoked permit from state board, applicant who thereafter applies public waters to beneficial use, acquires vested right. *Rasmussen v. Blust*, 85 Neb. 198, 122 N.W. 862 (1909).

Where appropriator of water has acquired a vested right to use of water, he may enjoin upper riparian owner on stream from diverting and using the water for purposes not theretofore exercised. *McCook Irr. & Power Water Co. v. Crews*, 70 Neb. 109, 96 N.W. 996 (1903).

Riparian's right to flow of stream is a vested right, and part and parcel of the land, which legislation cannot abolish. *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

3. Limitations on appropriation

An appropriation of water, made prior to 1895, is not limited as to quantity except that it must be for some useful and beneficial purpose and within the limits of the capacity of the

diversion works. *Enterprise Irr. Dist. v. Willis*, 135 Neb. 827, 284 N.W. 326 (1939).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

4. Miscellaneous

Under former law, the right to appropriate water for irrigation purposes was limited to waters of natural streams. *Rogers v. Petsch*, 174 Neb. 313, 117 N.W.2d 771 (1962).

Under former law, Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal from an order or decision made by it. *Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist.*, 132 Neb. 547, 272 N.W. 560 (1937).

It is the duty of the state to see that the waters of its streams, used for irrigation purposes, will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. *State ex rel. Sorensen v. Mitchell Irr. Dist.*, 129 Neb. 586, 262 N.W. 543 (1935).

Agreement to pay maintenance fees for water rights may be enforced. *Farmers & Merchants Irr. Co. v. Brumbaugh*, 81 Neb. 641, 116 N.W. 512 (1908).

Overflow waters of streams, which run in well-defined course and again unite with stream at lower point, are part of stream and not surface water. *Brinegar v. Copass*, 77 Neb. 241, 109 N.W. 173 (1906).

One seeking to acquire easement for ditch over another's land must maintain it continuously without material change of location for full statutory period. *Dunn v. Thomas*, 69 Neb. 683, 96 N.W. 142 (1903).

Reasonable use of water is largely question of fact, depending upon circumstances, but entire diversion, waste, or needless diminution is clearly unreasonable. *Meng v. Coffee*, 67 Neb. 500, 93 N.W. 713 (1903); *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

Domestic purposes, as here used, has reference to use of water for domestic purposes permitted to riparian owner by common law, and does not contemplate diversion of large quantities of water in canals or pipe lines. *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

46-205 First appropriators; date of priority.

The priority of an appropriation shall date from the filing of the application in the office of the Department of Natural Resources.

Source: Laws 1895, c. 69, § 31, p. 254; R.S.1913, § 3373; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 5, p. 832; C.S.1922, § 8410; C.S. 1929, § 46-505; R.S.1943, § 46-205; Laws 2000, LB 900, § 94.

46-206 Appropriation; water to be returned to stream.

The water appropriated from a river or stream shall not be turned or permitted to run into the waters or channel of any other river or stream than that from which it is taken or appropriated, unless such stream exceeds in width one hundred feet, in which event not more than seventy-five percent of

the regular flow shall be taken and any such taking shall be subject to the provisions of section 46-289.

Source: Laws 1889, c. 68, § 6, p. 504; Laws 1893, c. 40, § 3, p. 378; R.S.1913, § 3376; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 8, p. 832; C.S.1922, § 8413; C.S.1929, § 46-508; R.S.1943, § 46-206; Laws 1981, LB 252, § 2.

Diversion of water from one watershed to another is permissible under sections 46-206 and 46-265, R.R.S.1943, so long as the stream from which it is diverted is more than one hundred feet wide and the diversion is not contrary to the public interest. *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 206 Neb. 535, 294 N.W.2d 598 (1980).

This section deals primarily with the limitation of the amount of water that may be taken from a stream more than one

hundred feet in width. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

46-207 Appropriation; no land to be crossed by more than one ditch.

No tract of land shall be crossed by more than one ditch, canal or lateral without the written consent and agreement of the owners thereof, if the first ditch, canal or lateral can be made to answer the purpose for which the second is desired or intended.

Source: Laws 1889, c. 68, § 3, p. 504; R.S.1913, § 3377; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 9, p. 832; C.S.1922, § 8414; C.S. 1929, § 46-509; R.S.1943, § 46-207.

No tract of land shall, without consent of owner, be burdened with two or more ditches for watering of same territory. *Walker v. Anderson*, 90 Neb. 119, 132 N.W. 937 (1911); *Paxton &*

Hershey Irr. C. & L. Co. v. Farmers & Merchants Irr. & L. Co., 45 Neb. 884, 64 N.W. 343 (1895).

(c) DEPARTMENT OF WATER RESOURCES; GENERAL POWERS AND DUTIES

46-208 Transferred to section 61-205.

46-209 Transferred to section 61-206.

46-210 Transferred to section 61-207.

46-211 Repealed. Laws 1984, LB 897, § 5.

46-212 Transferred to section 61-208.

46-212.01 Transferred to section 61-209.

46-212.02 Repealed. Laws 2000, LB 900, § 256.

46-213 Transferred to section 61-211.

46-214 Repealed. Laws 1981, LB 545, § 52.

(d) WATER DIVISIONS

46-215 Transferred to section 61-212.

46-216 Transferred to section 61-213.

46-217 Transferred to section 61-214.

46-218 Transferred to section 61-215.

46-219 Transferred to section 61-216.

46-220 Repealed. Laws 1953, c. 157, § 3.

46-221 Repealed. Laws 1953, c. 157, § 3.

46-222 Repealed. Laws 1987, LB 140, § 15.

46-223 Repealed. Laws 1987, LB 140, § 15.

46-224 Repealed. Laws 1987, LB 140, § 15.

46-225 Repealed. Laws 1953, c. 157, § 3.

(e) ADJUDICATION OF WATER RIGHTS

46-226 Determination of priority and amount of appropriation; duty of department; certain court orders; department; powers.

(1) The department shall make proper arrangements for the determination of priorities of right to use the public waters of the state and determine the same. The method of determining the priority and amount of appropriation shall be fixed by the department.

(2)(a) The department is authorized to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state.

(b) The only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 7, p. 835; C.S.1922, § 8426; C.S.1929, § 81-6307; R.S.1943, § 46-226; Laws 2000, LB 900, § 95; Laws 2009, LB184, § 1.

The Department of Natural Resources regulates the appropriation of surface water and has statutory authority to determine the priority and amount of surface water appropriated. *Koch v. Aupperle*, 274 Neb. 52, 737 N.W.2d 869 (2007).

The Department of Natural Resources has no common-law or statutory duty to regulate the use of ground water in order to protect a party's surface water appropriations. In the absence of independent authority to regulate the use of ground water, the department has no legal duty to resolve conflicts between surface water appropriators and ground water users. *Spear T Ranch v. Nebraska Dept. of Nat. Resources*, 270 Neb. 130, 699 N.W.2d 379 (2005).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re *Complaint of Central Neb. Pub. Power*, 270 Neb. 108, 699 N.W.2d 372 (2005).

Method of determining priority and amount of appropriation is vested in the exclusive original jurisdiction of the Department of Water Resources. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has authority to determine whether or not appropriation has been lost by nonuser. *State v. Nielsen*, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation could grant such appropriation for use of water of natural running stream as did not impair prior appropriations and rights to use water and could issue permits for improvements of streams, but could not determine damages or property rights involved. *City of Fairbury v. Fairbury Mill & Elevator Co.*, 123 Neb. 588, 243 N.W. 774 (1932).

Powers of former State Board of Irrigation were quasi-judicial, and adjudications were final, unless appealed from. *Enterprise Irr. Dist. v. Tri-State Land Co.*, 92 Neb. 121, 138 N.W. 171 (1912); *Farmers Canal Co. v. Frank*, 72 Neb. 136, 100 N.W. 286 (1904).

46-226.01 Application for recognition of incidental underground water storage; procedure.

Any person having an approved perfected appropriation may file with the department an application for recognition of incidental underground water storage associated with such appropriation on a form prescribed and furnished by the department without cost. Upon receipt of an application, the department

shall proceed in accordance with rules and regulations adopted and promulgated by the department.

Source: Laws 1983, LB 198, § 5; Laws 1985, LB 488, § 2.

46-226.02 Application; director; approval; conditions.

(1) The director may approve an application filed pursuant to section 46-226.01 or 46-297 subject to the following conditions:

(a) The rate, quantity, or time of surface water diversion shall not be increased from that approved for the appropriation at the time the application is filed;

(b) If the water stored or to be stored underground will be used for irrigation purposes, the director may approve the service of additional amounts of land or different lands not identified to be served with facilities included under the original appropriation, if the director determines that the change is in the public interest, and that any interference with the rights of senior appropriators as a result of such change is unavoidable and not material;

(c) The priority date shall remain the same as that of the original appropriation; and

(d) When the application is for recognition of incidental underground water storage, such stored water is being withdrawn or is otherwise being used for beneficial purposes.

(2) For an application filed pursuant to section 46-226.01, the burden shall be on the applicant to prove that underground water storage has occurred.

(3) The director may grant the application in a modified or reduced form, if required by the public interest, and may impose such other reasonable conditions as deemed appropriate to protect the public interest.

(4) The director's order of approval shall specify:

(a) The source of the water stored or to be stored underground;

(b) The underground water storage method; and

(c) A description of the area served or to be served by the water stored underground.

Source: Laws 1983, LB 198, § 6; Laws 1985, LB 488, § 3; Laws 1995, LB 350, § 2.

46-226.03 Terms, defined.

For purposes of sections 46-226 to 46-243:

(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Incidental underground water storage has the same meaning as in section 46-296;

(4) Induced ground water recharge means the process by which ground water withdrawn from wells near a natural stream is replaced by surface water flowing in the stream;

(5) Intentional underground water storage has the same meaning as in section 46-296;

(6) Public water supplier means a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes;

(7) Underground water storage has the same meaning as in section 46-296; and

(8) Well means a well, subsurface collector, or other artificial opening or excavation in the ground from which ground water flows under natural pressure or is artificially withdrawn.

Source: Laws 1993, LB 301, § 1; Laws 2000, LB 900, § 96; Laws 2004, LB 962, § 5.

46-227 Water in streams; measurement; duty of department.

The department shall measure or cause to be measured the quantity of water flowing in the several streams of the state, shall make a record thereof in the office of the department, and shall from time to time make such additional measurements as may be necessary, in considering applications for water appropriations and such controversies as may arise regarding the distribution of water.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 8, p. 835; C.S.1922, § 8427; C.S.1929, § 81-6308; R.S.1943, § 46-227; Laws 2000, LB 900, § 97.

46-228 Flowing water; standards of measurement.

The standard of measurement for flowing water, both for determining the flow of water in natural streams and for the purpose of distributing it therefrom when appropriations have been made for direct flow, shall be one cubic foot per second of time. The standard of measurement of the volume of water shall be one acre-foot, equivalent to forty-three thousand five hundred sixty cubic feet, and when water is stored in any natural or artificial reservoir, this standard shall be used for determining the capacity of storage reservoirs, the amount stored, and the amount used therefrom, except that for public water supplier appropriations, the standard of measurement may be in terms of gallons.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 21, p. 843; C.S.1922, § 8440; C.S.1929, § 81-6321; R.S.1943, § 46-228; Laws 1993, LB 301, § 2.

46-229 Appropriations; beneficial or useful purpose required; termination; procedure.

All appropriations for water must be for a beneficial or useful purpose and, except as provided in sections 46-290 to 46-294 and 46-2,122 to 46-2,125, when the owner of an appropriation or his or her successor in interest ceases to use it for such purpose for more than five consecutive years, the right may be terminated only by the director pursuant to sections 46-229.02 to 46-229.05.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 835; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c.

172, § 1(1), p. 520; Laws 1983, LB 380, § 1; Laws 1984, LB 818, § 1; Laws 1993, LB 302, § 2; Laws 1995, LB 99, § 14; Laws 2000, LB 900, § 98; Laws 2004, LB 962, § 6.

1. Beneficial use
2. Loss of appropriation
3. Miscellaneous

1. Beneficial use

Beneficial use requires, in the case of an appropriation for irrigation purposes, actual application of the water to the land for the purpose of irrigation. *Hostetler v. State*, 203 Neb. 776, 280 N.W.2d 75 (1979).

The diversion of some amount of water into the ditch a few days before suit is filed to cancel the water appropriation does not constitute a beneficial use within the meaning of this section. *Hostetler v. State*, 203 Neb. 776, 280 N.W.2d 75 (1979).

To constitute a beneficial use within the meaning of the appropriation statute the use must be one described in the appropriation. *Hostetler v. State*, 203 Neb. 776, 280 N.W.2d 75 (1979).

Under this section all appropriations for water must be for some beneficial or useful purpose, and when the appropriator or his successor in interest ceases to use it for such purpose the right ceases. *Hostetler v. State*, 203 Neb. 776, 280 N.W.2d 75 (1979).

2. Loss of appropriation

A completed appropriation of water for power purposes remains a valid appropriation to the full extent of its granted right unless restricted by a finding of abandonment or nonuser. *Hickman v. Loup River P. P. Dist.*, 176 Neb. 416, 126 N.W.2d 404 (1964).

Appropriation may be lost either by abandonment or nonuser. *State v. Nielsen*, 163 Neb. 372, 79 N.W.2d 721 (1956).

Evidence, in proceeding to forfeit appropriation of water for nonuser, supported judgment for contestee. *State v. Delaware-Hickman Ditch Co.*, 114 Neb. 806, 210 N.W. 279 (1926).

3. Miscellaneous

This section has become the fixed policy of the state. *State v. Birdwood Irr. Dist.*, 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, provision empowering Department of Roads and Irrigation to cancel water appropriation, where water was not put to beneficial use, was not unconstitutional as violative of due process, or as giving department judicial powers. *Dawson County Irr. Co. v. McMullen*, 120 Neb. 245, 231 N.W. 840 (1930).

Under former law, appeal from decree refusing to cancel water rights may be taken to district court instead of directly to Supreme Court. *State v. Oliver Bros.*, 119 Neb. 302, 228 N.W. 864 (1930).

Under former law, dismissal of proceeding by Department of Roads and Irrigation to cancel water rights did not bind other appropriators not parties. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

In determining priorities, former state board could recognize and determine existing conditions and limitations, but could not impose new. *Enterprise Irr. Dist. v. Tri-State Land Co.*, 92 Neb. 121, 138 N.W. 171 (1912).

46-229.01 Department; examine condition of ditches.

The department shall, as often as necessary, examine into the condition of all ditches constructed or partially constructed within the state and shall compile information concerning the condition of every water appropriation and all ditches and canals and other works constructed or partially constructed thereunder.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(2), p. 520; Laws 2000, LB 900, § 99.

46-229.02 Appropriations; preliminary determination of nonuse; notice; order of cancellation; procedure.

(1) If, based upon the results of a field investigation or upon information, however obtained, the department makes preliminary determinations (a) that an appropriation has not been used, in whole or in part, for a beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that the department knows of no reason that constitutes sufficient cause, as provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such appropriation. Such notice shall contain the information required by section 46-229.03, shall be

provided in the manner required by such section, and shall be posted on the department's website. Each owner of the appropriation and any owner of the land under such appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and include any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.

(2) If no owner of the appropriation or of the land under the appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the appropriation in whole or in part. The extent of such cancellation shall not exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's website and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable. No cancellation under this subsection shall prohibit an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation company or canal company from asserting the rights provided by subsections (5) and (6) of section 46-229.04.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be canceled, in whole or in part, it shall inform the owners of the appropriation, and any other owners of the land under the appropriation, of such determination.

(4) If the department determines that an owner has provided sufficient information to support the conclusion that the appropriation should be canceled only in part and if (a) the owner or owners filing the notice of contest agree in writing to such cancellation in part and (b) such owner or owners are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3), and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropriation known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's website and shall be served or published, as applicable, in the manner provided in subsection (2), (3), or (4) of section 46-229.03, as applicable.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's website and shall be served or published, as applicable, in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and telephone number that may be used to obtain a copy of the order.

(7) A water appropriation that has not been perfected pursuant to the terms of the permit may be canceled by the department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit, except that this subsection does not apply to appropriations to which subsection (2) of section 46-237 applies.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(3), p. 521; Laws 1963, c. 278, § 1, p. 834; Laws 1983, LB 380, § 2; Laws 1984, LB 1000, § 1; Laws 2004, LB 962, § 7; Laws 2006, LB 1226, § 7.

Under former law, a notice of hearing on the adjudication of a water right that states the place and time of the hearing, names and describes the appropriation that is the subject of the hearing, states that the Department of Natural Resources' records indicate that the land approved for irrigation under the appropriation has not been irrigated for more than 3 consecutive years, states that the hearing will be held pursuant to sections 46-229 to 46-229.05, as amended, states that all interested persons shall appear at the hearing and show cause why the appropriation or part of the appropriation should not be canceled or annulled, states that the appropriation may be canceled if no one appears at the hearing, includes the address, post office box number, telephone number, and fax number of the Department of Natural Resources, and attaches copies of sections 46-229 to 46-229.05 provides adequate notice of the issues to be taken up at the hearing and contains the information required under this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Nonuse for over three years terminates the user's rights by statutory cancellation proceedings. Northport Irr. Dist. v. Jess, 215 Neb. 152, 337 N.W.2d 733 (1983).

The statutory forfeiture provisions of the section apply to vested rights in water appropriations established prior to April 4, 1895. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

An unexcused nonuse of water appropriation rights by a predecessor in title binds the successor in title. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

Procedure for cancellation of water rights is not exclusive. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation could forfeit water right for nonuser for more than three years. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

46-229.03 Appropriations; preliminary determination of nonuse; notice; contents; service.

(1) The notice provided by the department in accordance with subsection (1) or (5) of section 46-229.02 shall contain: (a) A description of the appropriation; (b) the number assigned to the appropriation by the department; (c) the date of priority; (d) the point of diversion; (e) if the notice is published, the section or sections of land which contain the lands located under such appropriation; (f) if the notice is served by personal service or by registered or certified mail, a description of the lands which are located under such appropriation, a description of the information used by the department to reach the preliminary determinations of nonuse, and a copy of section 46-229.04; (g) a description of the owner's options in response to the notice; (h) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what consti-

tutes sufficient cause for nonuse; (i) a copy of the form that such owner may file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is mailed; (j) the location where the owner may obtain a form to file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is published; and (k) if the notice is provided in accordance with subsection (5) of section 46-229.02, the date, time, and location of the hearing.

(2) For any owner whose name and address are known to the department or can be reasonably obtained by the department, the notice shall be served by personal service or by registered mail or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is listed as an owner of the land involved, on the records of the county clerk or register of deeds for the county in which the land is located.

(3) For any owner whose name and address are not known to the department and cannot reasonably be obtained by the department, such notice shall be served by publication in a legal newspaper published or of general circulation in any county in which the place of diversion is located and in a legal newspaper published or of general circulation in each county containing land for which the right to use water under the appropriation is subject to cancellation. Each such publication shall be once each week for three consecutive weeks.

(4) Landowners whose property under such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once each week for three consecutive weeks.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(4), p. 521; Laws 1957, c. 242, § 39, p. 852; Laws 1973, LB 186, § 5; Laws 1980, LB 648, § 1; Laws 1986, LB 960, § 32; Laws 1987, LB 140, § 3; Laws 2004, LB 962, § 8; Laws 2006, LB 1226, § 8.

Notice of hearing on cancellation of water rights must be given to the party appearing of record to be the owner. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956). Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

This section does not fix the time in which an appropriator must put water to a beneficial use. North Loup River P. P. & I.

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 website 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 website 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.

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

Under former law, at a hearing pursuant to subsection (1) of this section, the presentation of prima facie evidence for the forfeiture and annulment of a water appropriation in the form of the verified field investigation report of an employee of the Department of Natural Resources shifts the burden to an interested party to present evidence that the water appropriation has been put to a beneficial use during the prior 3 consecutive years. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, evidence of beneficial use of a water appropriation more than 3 years prior to the hearing on the adjudication of the water right does not sustain the burden of an interested party after presentation of prima facie evidence for the forfeiture and annulment of the water appropriation. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, once it has been established that a water appropriation has not been used for more than 3 consecutive

years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, use of a water appropriation only when another water source is inadequate and 3 years prior to the hearing on the adjudication of the water appropriation does not establish sufficient cause for nonuse pursuant to subsection (3)(c) of this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

The statutory procedure set forth is not the only procedure for canceling water rights. When an application is made to transfer water rights which no longer exist because of nonuse, the director may cancel the rights in the transfer proceeding if the evidence shows that the rights have expired through nonuse. In re Applications T-61 and T-62, 232 Neb. 316, 440 N.W.2d 466 (1989).

This section does not violate constitutional notions of due process. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Reports of department engineers are prima facie evidence on issue of abandonment. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

46-229.05 Adjudication of water rights; appeal.

An appeal may be taken from the decision of the department upon such hearing as provided by section 61-207.

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(6), p. 522; Laws 1991, LB 732, § 106; Laws 2000, LB 900, § 101.

This section does not violate constitutional notions of due process. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

46-229.06 Appropriations; partial cancellation; rate of diversion; determination.

When a departmental proceeding that is conducted pursuant to sections 46-229 to 46-229.04 concerns the partial cancellation of an appropriation, the department may receive evidence on the question of whether, following such partial cancellation, a reduction in the rate of diversion to the maximum rate prescribed in section 46-231 would result in an authorized diversion rate less than the rate necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation. If the director determines, based on a preponderance of the evidence, that such rate would be less than the rate necessary, in the interests of good husbandry, for the production of crops, he or she may approve a diversion rate for the remaining portion of the appropriation greater than the maximum rate authorized by

section 46-231. Such increased rate can be no greater than the rate authorized for the appropriation prior to the partial cancellation and no greater than the rate determined by the director to be necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation.

Source: Laws 2004, LB 962, § 10.

46-230 Adjudication of water rights; record; duty of appropriation owner to furnish information; notice.

(1) As the adjudication of a stream progresses and as each claim is finally adjudicated, the director shall make and cause to be entered of record in his or her office an order determining and establishing the priorities of right to use the water of such stream, the amount of the appropriation of the persons claiming water from such stream and the character of use for which each appropriation is found to have been made, and the address of the owner of each water appropriation.

(2) Whenever requested by the department, the owner of any appropriation not held by an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company shall provide the department with the name, address, and telephone number of each then-current owner of the appropriation and with the name, address, and telephone number of any tenant or other person who is authorized by the owner to receive opening and closing notices and other departmental communications relating to the appropriation. Each appropriation owner shall also notify the department any time there is a change in any of such names, addresses, or telephone numbers. Notice of ownership changes may be provided to the department in the manner provided in section 76-2,124 or in any other manner authorized by the department. If notice of an ownership change is provided other than in accordance with such section, the notice shall include such evidence of ownership as the director may require. Notice of all other changes may be provided in any manner authorized by the department. Upon receipt of any new information, the department shall update its records. The department shall not collect a fee for the filing of any such information or for updating its records.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 10, p. 837; C.S.1922, § 8429; C.S.1929, § 81-6310; Laws 1941, c. 29, § 11, p. 137; C.S.Supp.,1941, § 81-6310; R.S.1943, § 46-230; Laws 1973, LB 186, § 7; Laws 1979, LB 204, § 1; Laws 2000, LB 900, § 102; Laws 2001, LB 667, § 2; Laws 2002, LB 458, § 1; Laws 2004, LB 962, § 11.

46-231 Amount and priority of appropriation; determination; limitation of amount; storage water.

Each appropriation shall be determined in its priority and amount by the time at which it is made and the amount of water which the works are constructed to carry. An appropriator shall at no time be entitled to the use of more than he or she can beneficially use for the purposes for which the appropriation has been made, and the amount of any appropriation made by means of enlargement of the distributing works shall be determined in like manner.

An allotment from the natural flow of streams for irrigation shall not exceed one cubic foot per second of time for each seventy acres of land and shall not exceed three acre-feet in the aggregate during one calendar year for each acre of land for which such appropriation has been made, and an allotment shall not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops. Such limitations do not apply to storage waters or to water appropriations transferred pursuant to sections 46-2,122 to 46-2,125 and 46-2,127 to 46-2,129.

When storage water is being used in addition to the natural flow, the person in charge of the ditch or canal shall, upon his or her request and within twenty-four hours thereof, be notified in writing by the user of such storage waters of the time of withdrawal from natural streams to be distributed according to law.

When an appropriation is for irrigation purposes and the amount is so small that a proper distribution and application is impractical, as much water as the applicant can use without waste may be allotted for a limited time so fixed by the department as to give each appropriator his or her just share without violating other rights, so long as (1) the volume of water used in a twenty-four-hour period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a twenty-four-hour period or (2) the volume of water used in a seven-day, Monday-through-Sunday period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a seven-day period. The department shall determine schedules among appropriators to assure that other rights are not violated.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 11, p. 837; C.S.1922, § 8430; Laws 1929, c. 133, § 1, p. 486; C.S.1929, § 81-6311; R.S.1943, § 46-231; Laws 1987, LB 140, § 5; Laws 1993, LB 789, § 1; Laws 1995, LB 99, § 15; Laws 2000, LB 900, § 103.

A user may not appropriate water without a valid permit specifically defining the source of the appropriation. *Northport Irr. Dist. v. Jess*, 215 Neb. 152, 337 N.W.2d 733 (1983).

Property rights in water for irrigation consist not alone in the amount of, but also in the priority of, the appropriation. *Vonburg v. Farmers Irr. Dist.*, 132 Neb. 12, 270 N.W. 835 (1937).

Appropriator takes subject to rights of all prior appropriators, and cannot infringe upon their privileges. *Farmers Canal Co. v. Frank*, 72 Neb. 136, 100 N.W. 286 (1904); *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

46-232 Repealed. Laws 1955, c. 183, § 6.

(f) APPLICATION FOR WATER

46-233 Application to appropriate water; time of making; contents; procedure; priority date; notice; hearing; temporary permit; emergency use.

(1) The United States and every person intending to appropriate any of the public waters of the State of Nebraska shall, before (a) commencing the construction, enlargement, or extension of any works for such purpose, (b) performing any work in connection with such construction, enlargement, or extension, or (c) taking any water from any constructed works, make an application to the department for a permit to make such appropriation. A permit may be obtained to appropriate public waters for intentional underground water storage and recovery of such water. A public water supplier may make application to appropriate public waters for induced ground water recharge.

(2) The application shall be upon a form prescribed and furnished by the department without cost to an applicant. Such application shall set forth (a) the name and post office address of the applicant, (b) the source from which such appropriation shall be made, (c) the amount of the appropriation desired, as nearly as it may be estimated, (d) the location of any proposed work in connection with the appropriation, (e) the estimated time required for its completion, which estimated time shall include the period required for the construction of ditches, pumps, and other features or devices, (f) the time estimated at which the application of the water for the beneficial purposes shall be made, which time shall be limited to a reasonable time following the estimated time of completion of the work when prosecuted with diligence, (g) the purpose for which water is to be applied and (i) if for induced ground water recharge by a public water supplier, a statement of the times of the year when and location along a stream where flows for induced ground water recharge are proposed and (ii) if for irrigation, a description of the land to be irrigated by the water and the amount, and (h) such facts and supporting documentation as are required by the department which shall include, but not be limited to, the depth of all wells, the extent of the underlying aquifer, the expected rate of recharge, the minimum flow or flows necessary to sustain the well field throughout the reach identified, and the period of time that a well field would continue to meet minimal essential needs of the public water supplier when there is no flow as those factors relate to and are part of an evaluation of pertinent hydrologic relationships.

A public water supplier making application for induced ground water recharge may submit with its application a statement of the amount of induced ground water recharge water which the public water supplier presently uses as well as the amount of induced ground water recharge water it anticipates using in the next twenty-five-year period. Such statement shall also quantify the total amount of water the public water supplier presently uses from the well field as well as the total amount of water it anticipates using from the well field in the next twenty-five-year period.

(3) Upon receipt of an application containing the information set forth in this section, the department shall (a) make a record of the receipt of the application, (b) cause the application to be recorded in its office, and (c) make a careful examination of the application to ascertain whether it sets forth all the facts necessary to enable the department to determine the nature and amount of the proposed appropriation. If such an examination shows the application in any way defective, it shall be returned to the applicant for correction, with a statement of the correction required, within ninety days after its receipt. Ninety days shall be allowed for the refile of the application, and in default of such refile, the application shall stand dismissed. Except as provided in subsection (4) of this section, if so filed and corrected as required within such time, the application shall, upon being accepted and allowed, take priority as of the date of the original filing, subject to compliance with the future provisions of the law and the rules and regulations thereunder. During the pendency of any application or upon its approval, the department, upon proper authorization and request of the applicant, may assign the application a later priority date.

(4) For public water supplier wells in existence on September 9, 1993, the priority date assigned to an application for induced ground water recharge made by a public water supplier shall be:

(a) June 27, 1963, for water supply wells and facilities constructed and placed in service on or before June 27, 1963;

(b) January 1, 1970, for water supply wells and facilities constructed and placed in service on or after June 28, 1963, and on or before December 31, 1969;

(c) January 1, 1980, for water supply wells and facilities constructed and placed in service on or after January 1, 1970, and on or before December 31, 1979;

(d) January 1, 1990, for water supply wells and facilities constructed and placed in service on or after January 1, 1980, and on or before December 31, 1989; and

(e) January 1, 1993, for water supply wells and facilities constructed and placed in service on or after January 1, 1990, and on or before September 9, 1993.

(5) Prior to taking action on an application for induced ground water recharge, the director shall publish notice of such application at the applicant's expense at least once each week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. The notice shall state that any person having an interest may, in writing, object to the application. Any such objection shall be filed with the department within two weeks after the final publication of the notice.

(6) After the director has accepted the application made under subsection (2) of this section as a completed application and published notice as required under subsection (5) of this section, the director shall, if he or she determines that a hearing is necessary, set a time and place for a public hearing on the application. The hearing shall be held within reasonable proximity to the area in which the wells are or would be located. At the hearing the applicant shall present all hydrological data and other evidence supporting its application. All interested parties shall be allowed to testify and present evidence relative to the application.

(7) An unapproved application pending on August 26, 1983, may be amended to include appropriation for intentional underground water storage and recovery of such water.

(8) Application may be made to the department for a temporary permit to appropriate water. The same standards for granting a permanent appropriation shall apply for granting such temporary permit except when the temporary permit is for road construction or other public use construction and the amount of water requested is less than ten acre-feet in total volume. For temporary permits for public-use construction, the applicant shall include on the application the location of the diversion, the location of use, a description of the project, the amount of water requested, and the person to contact. Temporary permits for public-use construction and for less than ten acre-feet in total volume may be granted without any determination of unappropriated water and shall be considered to be in the public interest. The requirement of filing a map or plans with the application for a temporary permit may be waived at the discretion of the director. In granting a temporary permit, the director shall specify a date on which the right to appropriate water under the permit shall expire. Under no circumstances shall such date be longer than one calendar year after the date the temporary permit was granted. Temporary permits shall

be administered during times of shortage based on priority. The right to appropriate water shall automatically terminate on the date specified by the director on the temporary permit without further action by the department.

(9) Water may be diverted from any stream, reservoir, or canal by any fire department or emergency response services for the purpose of extinguishing a fire in progress in an emergency without obtaining a permit from the department. The installation of a dry well for this purpose is allowed without the prior permission of the department, but the department shall be informed of any such installation, its location, and the party responsible for its installation and maintenance within thirty days after the installation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 16, p. 841; C.S.1922, § 8435; C.S.1929, § 81-6316; R.S.1943, § 46-233; Laws 1955, c. 138, § 1, p. 513; Laws 1957, c. 198, § 1, p. 696; Laws 1983, LB 198, § 7; Laws 1993, LB 301, § 3; Laws 1993, LB 789, § 2; Laws 2000, LB 900, § 104; Laws 2001, LB 129, § 3.

This section does not supplant the common-law standard of standing. *Metropolitan Utilities Dist. v. Twin Platte NRD*, 250 Neb. 442, 550 N.W.2d 907 (1996).

An application to divert water is only a request for permission to appropriate public waters of the state. In re Applications A-16027 et al., 242 Neb. 315, 495 N.W.2d 23 (1993).

An application for a water permit under this section is not required until actual construction work at the site is commenced. *Winter v. Lower Elkhorn Nat. Resources Dist.*, 206 Neb. 70, 291 N.W.2d 245 (1980).

Requirements for appropriation of water for power purposes are met when appropriator has constructed power facilities and is ready and willing to deliver hydroelectric energy to users upon demand. *Hickman v. Loup River P. P. Dist.*, 176 Neb. 416, 126 N.W.2d 404 (1964).

Approval of organization of district does not determine right to appropriation of water. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 429 (1960); *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 416 (1960).

The federal government has a right to appropriate flood and unused waters in connection with any irrigation project con-

structed by the United States. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

Appropriated waters should be measured at the point of diversion. *Loup River Public Power District v. North Loup River Public Power & Irr. Dist.*, 142 Neb. 141, 5 N.W.2d 240 (1942).

Property rights for irrigation purposes consist not alone in the amount of, but also in the priority of, the appropriation. *Vonburg v. Farmers Irr. Dist.*, 132 Neb. 12, 270 N.W. 835 (1937).

Under former law, Department of Roads and Irrigation was given discretionary power in acting upon applications to so limit the grant that it would not be detrimental to public welfare. *Kirk v. State Board of Irrigation*, 90 Neb. 627, 134 N.W. 167 (1912).

Under former law, judgment of Department of Roads and Irrigation on matters within its jurisdiction could not be collaterally attacked, and earlier section was not applicable to case where land was under ditch already constructed of sufficient capacity to water same. *State v. Several Parcels of Land*, 80 Neb. 424, 114 N.W. 283 (1907).

Application which does not contain description of land nor describe location of canal is not good. *Farmers Canal Co. v. Frank*, 72 Neb. 136, 100 N.W. 286 (1904).

46-233.01 Permit to appropriate water for use in another state; application; considerations; determination.

(1) Application may be made to the department for a permit to appropriate any of the public surface waters of the State of Nebraska to be diverted or stored in Nebraska for use in any other state.

(2) In determining whether to grant such application, the director shall consider the following factors:

(a) Whether unappropriated water exists in the source of supply named in the application;

(b) Whether such application and appropriation when perfected are not otherwise detrimental to the public welfare;

(c) Whether denial of the application is demanded by the public interest; and

(d) Whether the proposed use is a beneficial use of water.

(3) When determining whether denial of such application is demanded by the public interest, the director shall consider the following factors:

(a) The economic, environmental, and other benefits of the proposed use;

- (b) Any adverse economic, environmental, and other impacts of the proposed use;
- (c) Any current beneficial uses being made of the unappropriated water;
- (d) The economic, environmental, and other benefits of not allowing the appropriation and preserving the water supply for beneficial uses within the state;
- (e) Alternative sources of water supply available to the applicant; and
- (f) Any other factors consistent with the purposes of this section that the director deems relevant to protecting the interests of the state and its citizens.

The application shall be deemed in the public interest if the overall benefits to Nebraska are greater than the adverse impacts to Nebraska. The director's order granting or denying an application shall specify the reasons for such action, including a discussion of the required factors for consideration, and shall document such decision by reference to the hearing record, if any, and to any other sources used by the director in making the decision.

Source: Laws 1953, c. 161, § 1, p. 504; Laws 1987, LB 146, § 4; Laws 2000, LB 900, § 105.

46-233.02 Appropriation of water for use in another state; laws governing; rights of appropriators.

Such applications and all rights thereunder shall be governed by the provisions of the Constitution and statutes of Nebraska as now existing or hereafter amended. Appropriators under the provisions of sections 46-233.01 and 46-233.02 shall have no greater rights than those under appropriations for use within the State of Nebraska.

Source: Laws 1953, c. 161, § 2, p. 505.

46-234 Application for water; refusal; grounds; effect; necessity for consent; perfection of appropriation; time allowed.

If there is no unappropriated water in the source of supply or if a prior appropriation has been perfected to water the same land to be watered by the applicant, the department may refuse such application. An application may also be refused (1) if existing facilities other than those owned or operated by the applicant are to be utilized and the applicant fails to show, by documentary evidence, agreements with the owner and operator of the facilities to allow the applicant to use such facilities or (2) when denial is demanded by the public interest. The party making such application shall not prosecute such work so long as such refusal continues in force. An application for appropriation shall not be exclusive of any of the lands included therein until the owner or owners of such land give consent to the same in proper form duly acknowledged. No application made or canal constructed, prior to the application of the water and the perfection of an appropriation therefor or the filing of the consent, shall prevent other applications from being allowed and other canals from being constructed to irrigate the same lands or any of them. In case of an application for an appropriation of water for the development of water power, the department shall promptly act upon such application and limit the time within which

such appropriation shall be perfected to the period within which the proposed power project can be completed by uninterrupted and expeditious construction.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 18, p. 842; Laws 1921, c. 291, § 1, p. 941; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S. 1943, § 46-234; Laws 1981, LB 252, § 3; Laws 1984, LB 672, § 1; Laws 2000, LB 900, § 106.

46-235 Application for water; approval; date of priority; conditional or partial approval; hearing; director; powers and duties.

(1) For applications other than those to appropriate public waters for induced ground water recharge, if there is unappropriated water in the source of supply named in the application, if such application and appropriation when perfected are not otherwise detrimental to the public welfare, and if denial of the application is not demanded by the public interest, the department shall approve the application and shall make a record in its office and return the application to the applicant, who shall on receipt thereof be authorized to proceed with the work and to take such measures as may be necessary to perfect such application into an appropriation. The priority of such application and appropriation when perfected shall date from the filing of the application in the office of the department, and the date of filing shall be regarded as the priority number thereof. The department may, upon examination of such application, approve it for a shorter period of time for perfecting the proposed appropriation or for a smaller amount of water or of land than applied for. The department may also impose such other reasonable conditions as it deems appropriate to protect the public interest. An applicant aggrieved by the action of the department shall, upon proper showing, be granted a hearing before the department, which hearing shall be conducted in accordance with the rules of procedure adopted by the department, and a full and complete record shall be kept of all such proceedings. When a complete record of the case has been made up, the department shall render an opinion of facts and of law based upon the evidence before it.

(2)(a) An application for an induced ground water recharge appropriation for public water supplier wells constructed and placed in service before September 9, 1993, shall be approved by the director if he or she finds that:

(i) The appropriation is necessary to maintain the well or wells for the use or uses for which the appropriation has been requested;

(ii) The rate and timing of the flow is the amount reasonably necessary to maintain the well or wells for the uses for which the appropriation has been requested; and

(iii) The application is in the public interest and is not detrimental to the public welfare. There shall be a rebuttable presumption that wells which are the subject of an application pursuant to subdivision (2)(a) of this section are in the public interest and are not detrimental to the public welfare.

(b) The director may approve the application for a well or wells constructed before September 9, 1993, but may specifically deny the applicant the right to request regulation of junior appropriators if the director, at the time of approval, finds that the well or wells, at the time of their construction, were not located, designed, or constructed so as to take reasonable advantage of aquifer conditions in the area to minimize the frequency and amount of the demand for flows for induced ground water recharge. Thereafter a public water supplier

holding an approved application which has been denied the right to request regulation of junior appropriators may petition the director for a hearing to present evidence showing the director that the well or wells have been modified, relocated, or reconstructed to take reasonable advantage of the aquifer conditions in the area. If the director determines that the well or wells have been so modified, relocated, or reconstructed, the director shall cause to be modified the approval of the application to allow for the regulation of junior appropriators, subject to the restrictions or conditions applicable to public water suppliers.

(c) An application for an induced ground water recharge appropriation for public water supplier wells constructed and placed in service before September 9, 1993, shall not be subject to the requirements of sections 46-288 and 46-289.

(3) An application for an induced ground water recharge appropriation for public water supplier wells constructed or to be constructed on or after September 9, 1993, shall be approved by the director if he or she makes the findings required by subdivision (2)(a) of this section and further finds that:

(a) There is unappropriated water available for the appropriation; and

(b) The well or wells involved have been or will be located and constructed to take reasonable advantage of aquifer conditions in the area to minimize the frequency and amount of the demand for flows for induced ground water recharge.

(4)(a) The director may approve the application filed under subsection (2) or (3) of this section for a smaller amount of water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the appropriation which the director deems necessary to protect the public interest. The director may grant an appropriation for specific months of the year if so demanded by the public interest. If the director approves the application, he or she shall issue a written order, which written order shall include the findings required by this section, the amount of the appropriation, and any conditions or limitations imposed under this section.

(b) In determining whether an application for an appropriation for induced ground water recharge is in the public interest, the director's considerations shall include, but not be limited to, the possible adverse effects on existing surface water or ground water users and the economic, social, and environmental value of such uses, including, but not limited to, irrigation, recreation, fish and wildlife, public water supply, induced ground water recharge for public water supply systems, and water quality maintenance.

(c) The stream segment and the determination of a reasonable and necessary amount of water required for induced ground water recharge purposes throughout the reach shall be defined specifically by the director in the order issued under this section.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 17, p. 842; C.S.1922, § 8436; C.S.1929, § 81-6317; R.S.1943, § 46-235; Laws 1981, LB 252, § 4; Laws 1987, LB 140, § 6; Laws 1993, LB 301, § 4; Laws 2000, LB 900, § 107.

Subsection (1) of this section does not require that the director engage in a particular sequential consideration of the issues presented by an application. *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W.2d 112 (1996).

Approval of an application merely authorizes the successful applicant to take other measures to perfect the application into an appropriation. *In re Applications A-16027 et al.*, 242 Neb. 315, 495 N.W.2d 23 (1993).

Because the word "may" in a statute will be given its ordinary, permissive, and discretionary meaning unless it can be shown that the intent of the drafters would be defeated by the application of such a meaning, the Department of Water Resources may decline to approve an appropriation of water which is significantly less than the application requests and may also impose such other reasonable conditions as it deems appropriate to protect the public interest. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Order approving application for appropriation may be made subject to limitations and conditions. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Discretionary power of approval by department is conferred. Custer Public Power Dist. v. Loup River Public Power Dist., 162 Neb. 300, 75 N.W.2d 619 (1956).

Approval of application for an appropriation is an exercise of quasi-judicial power by the department. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

An appropriation of public waters may be allowed in an amount less than that applied for, and if the applicant is dissatisfied, he must appeal. Loup River Public Power District v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

The irrigation act of 1889 prescribed no method of making a claim of appropriation of water, except the construction of works in which to divert the water and diverting it into such works. The extent of the appropriation was measured by the appropriation claimed, but within the limits of the capacity of the diversion works. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

46-235.01 Public water supplier; appropriation for induced ground water recharge; hearing; evidence of beneficial use; priority date; vesting.

A public water supplier which has received an appropriation for induced ground water recharge pursuant to section 46-235 may, from time to time and within twenty-five years after the priority assigned pursuant to section 46-233, petition the department for a hearing to present evidence showing that all or part of the original projection for additional water needs specified pursuant to subsection (2) of section 46-233 corresponds with the actual use. To the extent the public water supplier is making beneficial use of all or a portion of the water projected in the original application, the right to use such additional water shall vest and the priority date of such anticipated water use shall date back to the priority date assigned pursuant to section 46-233. A public water supplier may not request such a hearing at intervals of less than five years for each approved application.

Source: Laws 1993, LB 301, § 5.

46-235.02 Public water supplier; payment of compensation; when.

(1) Just compensation shall be required if a public water supplier exercises a preference to the injury of a senior appropriator.

(2) Just compensation shall be provided by a public water supplier to any injured junior appropriator whose appropriation was perfected prior to September 9, 1993, if and to the extent such injury resulted from regulation of junior appropriators requested by the public water supplier to provide water for any purpose other than domestic. Such compensation shall not be required to a junior appropriator if the regulation requested is to provide water for domestic purposes only. At the time any junior appropriator whose appropriation was perfected prior to September 9, 1993, is regulated at the request of a public water supplier, the department shall determine for each such appropriator the extent to which the regulation is for domestic purposes and the extent to which it is for other purposes.

(3) A cause of action for just compensation shall accrue at the time a junior appropriator is regulated by the department.

Source: Laws 1993, LB 301, § 6; Laws 2000, LB 900, § 108.

46-235.03 Public water suppliers; natural resources districts; powers.

Natural resources districts shall have the authority to impose restrictions or controls on public water suppliers as specified in the Nebraska Ground Water Management and Protection Act. Such restrictions or controls may limit the

withdrawal of ground water to a greater degree or extent than is otherwise permitted or allowed by a permit issued by the department.

Source: Laws 1993, LB 301, § 7; Laws 2000, LB 900, § 109.

Cross References

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

46-235.04 Induced ground water recharge appropriations; administration; transfer of priority dates; procedure.

(1) Induced ground water recharge appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. Appropriations for induced ground water recharge may be canceled and annulled as provided in sections 46-229.02 to 46-229.05.

(2) The department may approve the transfer of priority dates among water wells, including replacement water wells, located within a single well field that are subject to an induced recharge appropriation, or are part of an application for such an appropriation, to improve the well field's efficiency of operation with respect to river flow. The transfers shall be approved if the department finds that (a) the transfers would not increase the quantity of induced ground water recharge under the original priority date or application, (b) the amount of water withdrawn from water wells under the original priority date or application would not increase, (c) the quantity of streamflow needed to sustain well field operation under the original priority date would decrease, (d) the transfer would not impair the rights of other appropriators, and (e) the transfer is in the public interest in the same manner as provided in section 46-235. The department may assign multiple priority dates to a single water well that replaces two or more water wells which are abandoned. Replacement water wells installed pursuant to this subsection must be installed within the same well field as the abandoned water well. Notice shall be furnished and any hearing held as provided in sections 46-291 and 46-292. For purposes of this subsection, single well field means those contiguous tracts of land owned or leased by the applicant containing two or more water wells subject to induced recharge.

Source: Laws 1993, LB 301, § 8; Laws 1995, LB 871, § 2; Laws 1997, LB 30, § 1; Laws 2000, LB 900, § 110; Laws 2004, LB 962, § 12.

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.

State may lease use of public waters for power purposes. *Hickman v. Loup River P. P. Dist.*, 176 Neb. 416, 126 N.W.2d 404 (1964).

Applicant for use of water for power purposes may make lease with state. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 617 (1962).

46-237 Map or plat; requirements; failure to furnish; effect.

(1) Within six months after approval and allowance of an application other than an application to appropriate public waters for induced ground water recharge, the applicant shall file in the office of the department a map or plat which shall conform to the rules and regulations of the department as to material, size, coloring, and scale. Such map or plat shall show the source from which the proposed appropriation is to be taken and all proposed dams, dikes, reservoirs, canals, powerhouses, and other structures for the purpose of storing, conveying, or using water for any purpose whatsoever and their true courses or positions in connection with the boundary lines and corners of lands which they occupy. The lands to be irrigated shall be identified in the manner prescribed by the department. No rights shall be deemed to have been acquired until the provisions of this section have been complied with. Except as provided in subsection (2) of this section, failure to so comply shall work a forfeiture of the appropriation and all rights thereunder.

(2) For any appropriation with a priority date earlier than 1958 but for which either the appropriator has failed to comply with the requirements of subsection (1) of this section or a map or plat required by such subsection has been lost or destroyed through no fault of the appropriator, the lack of such compliance or of such map or plat shall not be the basis for a departmental adjudication or cancellation of the appropriation and the appropriation shall not be subject to legal challenge by any party on that basis.

(3) The department may notify any appropriator subject to subsection (2) of this section of the need to file a map or plat of lands under such appropriation. Unless the department grants an extension for good cause shown, the appropriator shall file the required map within three years after that notification and such map shall conform to the rules and regulations of the department as to material, size, coloring, and scale. If the appropriator fails to comply, the

department may deny the appropriator the right to divert or withdraw water subject to the appropriation until compliance has been achieved.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 19, p. 843; C.S.1922, § 8438; C.S.1929, § 81-6319; R.S.1943, § 46-237; Laws 1993, LB 301, § 9; Laws 2000, LB 900, § 112; Laws 2004, LB 962, § 13.

Filing of map was required as a step in completing appropriation of water. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Under former law, where application for appropriation was approved by Department of Roads and Irrigation, and filing of

map, etc., was made within six months thereafter pursuant to earlier section, department had discretion to extend time to complete work, owing to abnormal conditions. In re Application of Babson, 105 Neb. 317, 180 N.W. 562 (1920).

46-238 Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.

(1) Within twelve months after the approval of any application for water for irrigation, power, or other useful purpose by the department, the person making such application shall commence the excavation or construction of the works in which it is intended to divert the water and the actual construction of any water power plant and reservoir or reservoirs for storage in connection therewith and shall vigorously, diligently, and uninterruptedly prosecute such work to completion unless temporarily interrupted by some unavoidable and natural cause. A failure to comply with this section shall work a forfeiture of the appropriation and all rights under the appropriation. The cost of promotion and engineering work shall not be considered a part of the cost of construction, and the progress of the construction work shall be such that one-tenth of the total work shall be completed within one year from the date of approval of the application. The construction of all work required in connection with the proposed project shall be prosecuted in the manner described in this section and with such a force as shall assure the average rate of constructional progress necessary to complete such work or works within the time stipulated in the approval of such application, notwithstanding the ordinary delays and casualties that must be expected and provided against. A failure to carry on the construction of either an irrigation project or a water power project as outlined in this section shall work a forfeiture of the appropriation and all rights under the appropriation, and the department shall cancel such appropriation. The department shall have free access to all records, books, and papers of any irrigation or water power company, shall have the right to go upon the right-of-way and land of any such company, shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work when deemed advisable for physical valuation purposes.

(2) The department may extend, for reasonable lengths of time, the time for commencing excavation or construction, completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights as fixed in the approval of an application or otherwise for the appropriation of water. Such extension may be granted upon a petition to the department and the showing of reasonable cause. The department shall cause a notice of each petition received to be published at the petitioner's expense in at least one newspaper of general circulation in the county or counties of the appropriation once a week for three consecutive weeks. The department shall hold a hearing on the issue of extension on its own motion or if requested by any interested person. If a hearing is held, notice shall be given by certified mail to the applicant, to any

person who requested a hearing, and to any person who requests notification of the hearing. The department may grant the extension in the absence of a hearing if no requests for a hearing are received. Any interested person may be made a party to such action. Any party affected by the decision on the petition may appeal directly to the Court of Appeals. Subsequent extensions may be made in the same manner.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 13, p. 838; C.S.1922, § 8432; C.S.1929, § 81-6313; R.S.1943, § 46-238; Laws 1957, c. 198, § 2, p. 698; Laws 1979, LB 545, § 1; Laws 1980, LB 649, § 1; Laws 1987, LB 140, § 8; Laws 1991, LB 278, § 1; Laws 1991, LB 732, § 107; Laws 2000, LB 900, § 113; Laws 2009, LB209, § 1.

Extension of completion date for construction of irrigation works was authorized when such extension was made necessary by some unavoidable and natural cause. *Hickman v. Loup River P. P. Dist.*, 176 Neb. 416, 126 N.W.2d 404 (1964).

Where one appropriator was not barred by one-year time limitation and brought action, subsequent appropriators could appear and contest by petition in intervention. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 617 (1962).

Extension of time to complete appropriation was ratified by legislative act. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 429 (1960); *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 416 (1960).

Time for construction of a project could be extended where temporarily interrupted by unavoidable cause. *North Loup River P. P. & I. Dist. v. Loup River P. P. Dist.*, 162 Neb. 22, 74 N.W.2d 863 (1956).

Property rights in water for irrigation consist not alone in the amount of, but also in the priority of, the appropriation. *Vonburg v. Farmers Irr. Dist.*, 132 Neb. 12, 270 N.W. 835 (1937).

Under former law, adjudication of Department of Roads and Irrigation in proceeding to cancel water right, ordering that work be carried on under this section, was not binding upon other appropriators not parties. *Kinnan v. France*, 113 Neb. 99, 202 N.W. 452 (1925).

46-239 Repealed. Laws 1955, c. 183, § 6.

46-240 Additional appropriation; conditions; application procedure.

Whenever any person shall desire to divert any of the unappropriated waters of any natural lake or reservoir, or any person shall desire to recover any unappropriated water intentionally stored underground, for irrigation or any other beneficial purpose, for which water has already been appropriated, but for which in times of scarcity no water can be obtained from the appropriation already made therefor, such person may make application therefor and proceed as in cases of original application for appropriation.

An application for 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. 2, § 28, p. 845; C.S.1922, § 8447; C.S.1929, § 81-6328; R.S.1943, § 46-240; Laws 1983, LB 198, § 8; Laws 1985, LB 488, § 4.

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.

There is no statutory or regulatory requirement that the design of a dam exempt from the permit requirement of subsection (1) of this section by virtue of its impoundment capacity must include a passthrough device. *Koch v. Aupperle*, 274 Neb. 52, 737 N.W.2d 869 (2007).

Pondage, captured by reservoir during nonirrigation season, or from waters during irrigation season which are not subject to appropriation, is entitled to be held by a public power district for use in operation and maintenance of its power works. *Platte Valley Irr. Dist. v. Tilley*, 142 Neb. 122, 5 N.W.2d 252 (1942).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re *Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939).

Legislature contemplated the payment for, and not abatement of, damage from seepage arising from construction of perma-

ment reserves. *Applegate v. Platte Valley Public Power & Irr. Dist.*, 136 Neb. 280, 285 N.W. 585 (1939).

Defendant district was entitled to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

Public power and irrigation districts are not authorized to take private property for public use without just compensation. *State ex rel. Loseke v. Fricke*, 126 Neb. 736, 254 N.W. 409 (1934).

Right of eminent domain, provided for in this section, cannot be exercised where purpose of proposed condemnation is to take part of one person's land, against his will, as site for reservoir from which to irrigate land of another, for his sole benefit. *Vetter v. Broadhurst*, 100 Neb. 356, 160 N.W. 109 (1916).

46-242 Use of stored water; permit; application; conditions; limitations; procedure.

(1) After the completion to the satisfaction of the department of a storage reservoir for which a permit has been obtained pursuant to section 46-241, any person proposing to apply to beneficial use the water stored shall file with the department an application for a permit particularly describing the use to which the water is to be applied and, if for irrigation, describing the land to be irrigated.

(2) Application may be made for a permit to appropriate water for the irrigation of land lying both upstream and downstream from a storage reservoir

or intentional underground water storage facility. Under an approved application for a permit to appropriate water stored in a reservoir or facility for use on land upstream from such reservoir or facility, water may be diverted from the stream by the applicant and a compensating amount of water shall be released from the reservoir or facility for the use of downstream appropriators, but the rights of prior appropriators shall not be adversely affected by such exchange of water.

(3) The owner of a storage reservoir shall have a preferred right to make such application for a period of six months from the time limited for the completion of such reservoir. The date of the expiration of such period shall be endorsed upon the application when allowed. If an application is made by a person other than the owner of a reservoir at any time, the application shall not be approved by the department until the applicant shows, by documentary evidence, sufficient interest in such storage reservoir to entitle the applicant to enough water for the purpose set forth in the application.

(4) Application may be made for a permit to appropriate water from a storage reservoir, subject to subsection (3) of this section, or an intentional underground water storage facility, subject to subsection (6) of section 46-241, for instream use of water for recreation or fish and wildlife if the appropriation will not prejudice the rights of any prior appropriator for a beneficial use.

(5) An unapproved application for a permit pursuant to this section which is pending on August 26, 1983, may be amended to include use of stored water for intentional underground water storage.

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, § 46-242; Laws 1955, c. 183, § 3, p. 516; Laws 1965, c. 272, § 1, p. 774; Laws 1983, LB 198, § 10; Laws 1991, LB 277, § 1; Laws 2000, LB 900, § 116; Laws 2003, LB 619, § 5.

46-242.01 Repealed. Laws 1996, LB 890, § 1.

46-242.02 Repealed. Laws 1996, LB 890, § 1.

46-243 Application for water; reservoir intended for raising water level.

A reservoir constructed for the purpose of holding water back and raising it in order that it may be applied to lands of a higher level or given a greater head for power, shall not be considered a storage reservoir, but such reservoir together with the diverting or impounding dam, must be described in an application for flowing water when water is to be raised, in order to perfect the appropriation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 853; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-243.

(g) IRRIGATION WORKS; CONSTRUCTION,
OPERATION, AND REGULATION

46-244 Canals; declared works of internal improvement; laws applicable.

Canals and other works constructed for irrigation or water power purposes, or both, are hereby declared to be works of internal improvement; and all laws

applicable to works of internal improvement are hereby declared to be applicable to such canal and irrigation works.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 1, p. 846; C.S.1922, § 8451; C.S.1929, § 46-601; R.S.1943, § 46-244.

Cross References

Drover of livestock, duty to prevent damages, see section 54-305.

It is implied that all damages for taking or damaging of land must first be paid, and the fact that land is taken without institution of condemnation proceedings does not deprive owner of right to compensation. Dawson County Irr. Co. v. Stuart, 142 Neb. 428, 6 N.W.2d 602 (1942).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands, irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Individual does not have right of eminent domain for irrigation of his own land only. Onstott v. Airdale Ranch & Cattle Co., 129 Neb. 54, 260 N.W. 556 (1935).

Irrigation canals are works of internal improvement and persons constructing same have power of eminent domain. Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

46-245 Irrigation canal, defined; laws applicable.

Any canal constructed for the purpose of developing water power, or any other useful purpose, and from which water can be taken for irrigation, is hereby declared to be an irrigation canal and all laws relating to irrigation canals shall be deemed applicable thereto.

Source: Laws 1893, c. 40, § 2, p. 378; R.S.1913, § 3375; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 7, p. 832; C.S.1922, § 8412; C.S. 1929, § 46-507; R.S.1943, § 46-245.

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and

require that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

46-246 Ditches, dams, or similar works; construction; right of eminent domain.

All persons desirous of constructing a ditch, building a dam or dams for the purpose of storing water for irrigation, evaporation, and water power purposes, or conveying water to be applied to domestic, agricultural or any other beneficial use, or any dam, dike, reservoir, wasteway, subterranean gallery, filtering wells or other works for collecting, cleansing, filtering, retaining or storing water for any such use, or to enlarge any such ditch, conduit or waterworks, or to change the course thereof in any place, or to relocate the headgate or to change the point at which the water is to be taken into such canal or other waterworks, or to enlarge any ditch, canal or other works, or to construct any ditch, or to lay pipes or conduits for conveying or distributing water so collected or stored to the place of using the same, or to set, place or construct a wheel, pump, machine or apparatus for raising water out of any stream, lake, pond or well so that the same may flow or be conveyed to the place of using or storing the same, and who shall be unable to agree with the owner or claimant of any lands necessary to be taken for the site of any such works or any part thereof, touching the compensation and damages, shall be entitled to condemn the right-of-way over or through the lands of others, for any and all such purposes.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 2, p. 846; C.S.1922, § 8452; C.S.1929, § 46-602; R.S.1943, § 46-246.

A public power and irrigation district is given the power of condemnation by procedure in the county where the lands are situated if the owners of land object to construction. State ex

rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 140 Neb. 471, 300 N.W. 379 (1941).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. *In re Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

Individual does not have right of eminent domain for irrigation of his own land. *Onstott v. Airdale Ranch & Cattle Co.*, 129 Neb. 54, 260 N.W. 556 (1935).

Public power and irrigation districts are not authorized to take private property for public purposes without just compen-

sation. *State ex rel. Loseke v. Fricke*, 126 Neb. 736, 254 N.W. 409 (1934).

Right of eminent domain conferred on corporations generating electrical energy by appropriation of public waters is valuable franchise right which may be taxed. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

Condemnation proceedings are maintainable for rights-of-way for irrigation or water power purposes. *Blue River Power Co. v. Hronik*, 112 Neb. 500, 199 N.W. 788 (1924).

General rule as to damages in condemnation proceedings applies to taking of land for right-of-way by irrigation district. *Farmers Irr. Dist. v. Calkins*, 104 Neb. 196, 176 N.W. 367 (1920).

46-247 Ditches, dams, or similar works; construction; eminent domain; procedure.

In case of the refusal of the owner or claimant of any lands through which such ditch, canal, or other works are proposed to be made or constructed, to allow the passage thereof, the person desiring the right-of-way may acquire same through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 3, p. 847; C.S.1922, § 8453; C.S.1929, § 46-603; R.S.1943, § 46-247; Laws 1951, c. 101, § 92, p. 487.

Requirements of petition stated. *Little v. Loup River Public Power Dist.*, 150 Neb. 864, 36 N.W.2d 261 (1949).

A public power and irrigation district is given the power of condemnation by procedure in the county where the lands are situated if the owners of land object to construction. *State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist.*, 140 Neb. 471, 300 N.W. 379 (1941).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. *In re Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939).

When defect of misjoinder of parties appears on face of petition, it must be raised by special demurrer. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

To confer jurisdiction, the petition in a condemnation proceeding must describe the lands to be crossed, the size of the ditch, canal, or works to be constructed, the quantity of the land to be taken, and the names of the parties interested. *Platte Valley Public Power & Irr. Dist. v. Feltz*, 132 Neb. 227, 271 N.W. 787 (1937).

Individual does not have right of eminent domain for irrigation of his own land. *Onstott v. Airdale Ranch & Cattle Co.*, 129 Neb. 54, 260 N.W. 556 (1935).

Petition must, with substantial accuracy, describe lands to be crossed, size of works to be constructed, and quantity of land to be taken. *Blue River Power Co. v. Hronik*, 112 Neb. 500, 199 N.W. 788 (1924).

Right of eminent domain cannot be exercised for purely private purpose. *Vetter v. Broadhurst*, 100 Neb. 356, 160 N.W. 109 (1916).

46-248 Right-of-way for irrigation laterals; condemnation; procedure.

Whenever any person has acquired any rights to water for any lands owned by him, where, prior to the building of the laterals and the application of the water, any intervening canal, ditch, or lateral has been constructed, he shall have the right to construct laterals from such irrigation canal to the lands owned by him and to have such irrigation laterals across the lands and intervening canals to the land owned by him. If such intervening owner shall refuse to sell the right-of-way for such irrigation lateral, the owner shall have the right of eminent domain to condemn such right-of-way. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 4, p. 847; C.S.1922, § 8454; C.S.1929, § 46-604; R.S.1943, § 46-248; Laws 1951, c. 101, § 93, p. 488.

46-249 Irrigation works constructed by authority of United States; right-of-way over public lands; grant; school lands excepted.

There is hereby granted, over all the lands now or hereafter belonging to the State of Nebraska, except school lands held in trust by the Board of Educational Lands and Funds, a right-of-way for ditches, tunnels and telephone and transmission lines necessary to the construction and operation of any irrigation works constructed by authority of the United States; and in all conveyances such right-of-way shall be reserved.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 5, p. 847; C.S.1922, § 8455; C.S.1929, § 46-605; R.S.1943, § 46-249; Laws 1965, c. 273, § 1, p. 775.

Cross References

School lands, defined, see section 79-1035.03.

State could not grant to anyone, including the United States, a right-of-way over school lands without compensation. *United States v. 78.61 Acres of Land in Dawes and Sioux Cos.*, 265 F.Supp. 564 (D. Neb. 1967).

46-250 Places of diversion; storage sites; changes; procedure.

The owner of any ditch, storage reservoir, storage capacity, or other device for appropriating water may, upon petition to the Department of Natural Resources, and upon its approval, change the point at which the water under any water appropriation of record is diverted from a natural stream or reservoir, change the line of any flume, ditch, or aqueduct, or change a storage site. No reclamation district or power appropriator may change the established return flow point without the approval of the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 6, p. 848; C.S.1922, § 8456; C.S.1929, § 46-606; Laws 1941, c. 91, § 1, p. 361; C.S.Supp.,1941, § 46-606; R.S.1943, § 46-250; Laws 1951, c. 150, § 1, p. 598; Laws 1953, c. 158, § 1, p. 496; Laws 2000, LB 900, § 117.

Appropriator cannot change place of use of water, or extend ditch without permission of and subject to control of department. *Farmers & Merchants Irr. Co. v. Gothenburg Water Power & Irr. Co.*, 73 Neb. 223, 102 N.W. 487 (1905).

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.

Amendment of 1911 providing for acquisition of limited easement by irrigation district upon and along highway is not unconstitutional because of alleged defects in passage of act. *County of Dawson v. South Side Irr. Co.*, 146 Neb. 512, 20 N.W.2d 387 (1945).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. *In re Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

Slight temporary deviations from year to year in the course of a lateral irrigation ditch across a field do not affect an easement therein where the lateral has followed substantially the same course for more than the statutory period of ten years. *Clark v. Meeker Ditch Co.*, 131 Neb. 506, 268 N.W. 344 (1936).

46-252 Conducting of water into or along natural channels; withdrawal; permit, when required; liability.

(1) Any person may conduct, either from outside the state or from sources located in the state, quantities of water over and above those already present into or along any of the natural streams or channels of this state, for purposes of instream beneficial uses or withdrawal of some or all of such water for out-of-stream beneficial uses, at any point without regard to any prior appropriation of water from such stream, due allowance being made for losses in transit to be determined by the Department of Natural Resources. The department shall monitor movement of the water by measurements or other means and shall be responsible for assuring that such quantities are not subsequently diverted or withdrawn by others unless they are authorized to do so by the person conducting the water.

(2) Except as provided in subsections (3) and (4) of this section, before any person may conduct water into or along any of the natural streams or channels of the state, he or she shall first obtain a permit from the department. Application for the permit shall be made on forms provided by the department. Applications shall include plans and specifications detailing the intended times, amounts, and streamreach locations and such other information as required by the department. The water subject to such a permit shall be deemed appropriated for the use specified in the permit. Permitholders shall be liable for any damages resulting from the overflow of such stream or channel when water so conducted contributed to such overflow.

(3) Any person actually engaged in the construction or operation of any water power plant may, without filing with the department and upon payment of all damages, use any such stream or channel for a tailrace or canal and may, whenever necessary, widen, deepen, or straighten the bed of any such stream. All damages resulting therefrom shall be determined in the manner set forth in sections 76-704 to 76-724.

(4) Any person holding a storage use permit pursuant to section 46-242 shall not be required to obtain the permit required by this section.

(5) Nothing in this section shall be construed to exempt a person from obtaining any other permits required by law.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 8, p. 848; C.S.1922, § 8458; C.S.1929, § 46-608; R.S.1943, § 46-252; Laws 1951, c. 101, § 94, p. 488; Laws 1955, c. 183, § 4, p. 516; Laws 1992, LB 49, § 1; Laws 2000, LB 900, § 118.

Diversion of water through lands of others without their consent may be enjoined. *Kuhlmann v. Platte Valley Irr. Dist.*, 166 Neb. 493, 89 N.W.2d 768 (1958).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. *In re Platte Valley Public Power & Irr. Dist.*, 137 Neb. 313, 289 N.W. 383 (1939).

Natural stream can be used to conduct irrigation water, but user is liable for damages arising from such use, and, if damage is likely to continue, use may be enjoined. *Hagadone v. Dawson County Irr. Co.*, 136 Neb. 258, 285 N.W. 600 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. *Johnson v. Platte Valley Public Power & Irr. Dist.*, 133 Neb. 97, 274 N.W. 386 (1937).

Diversion of waters across lands of another without compliance with statute was enjoined, though permission was granted by board of public works. *Harris v. Steele*, 110 Neb. 213, 193 N.W. 268 (1923).

In interest of good husbandry, flow of surface waters along natural depressions or drainways through farm lands may be accelerated and incidentally increased by artificial means. *Steiner v. Steiner*, 97 Neb. 449, 150 N.W. 205 (1914).

46-253 Ditches; changing line; flow maintained; liability.

No owner of any ditch or canal shall change the line of the ditch or canal so as to interfere with the use of water by anyone, who, prior to the proposed change, had used water for irrigation purposes from such ditch or canal, and the owner of such ditch or canal shall keep the same in good repair so as to permit the water to flow in a quantity sufficient to furnish the statutory amount to the lands entitled thereto at all reasonable times. The majority of the water users under any ditch may designate such reasonable time for the use of water as such majority may determine upon, upon a written notice signed by such majority to the persons in control of such ditch or canal. The owners, or those in control, may limit the flow of water in the canal in accordance with such notice, between April 1 and May 1, and October 1 and November 15. No ditch shall be closed between May 1 and October 1. For a failure to cause the water to flow as aforesaid, the owners, or those in control, of any such ditch or canal shall be liable to anyone for any damage resulting from such failure, unavoidable accidents and shortage in the source of supply excepted.

Source: Laws 1895, c. 69, § 46, p. 261; R.S.1913, § 3436; Laws 1915, c. 65, § 1, p. 164; Laws 1919, c. 190, tit. VII, art. V, div. 3, § 9, p. 849; C.S.1922, § 8459; Laws 1925, c. 132, § 1, p. 347; Laws 1927, c. 143, § 1, p. 387; C.S.1929, § 46-609; Laws 1937, c. 104, § 1, p. 363; C.S.Supp.,1941, § 46-609; R.S.1943, § 46-253.

Action to enjoin district from using waters of stream, brought after close of irrigation season, in county other than that where principal place of business of district is located, making parties defendant certain public officers whose terms expire before

beginning of next irrigation season in order to confer jurisdiction in court, will be dismissed for want of jurisdiction. *Platte Valley Irr. Dist. v. Bryan*, 130 Neb. 657, 266 N.W. 73 (1936).

46-254 Interfering with waterworks; taking water without authority; penalty.

Any person owning or in control of any ditch, reservoir, or other device for appropriating or using water who willfully opens, closes, changes, or interferes with any headgate or controlling gate, or by any method or means takes any water from any natural stream, reservoir, or other source, through any ditch or canal to any land or lands, or allows the same to be done, or uses or allows to be used any water upon any land or lands, or for any other purpose whatsoever, without authority from the Department of Natural Resources, or who stores water in or releases water from a reservoir other than in compliance with orders of the Director of Natural Resources or his or her representative, shall be guilty of a Class II misdemeanor. Each day that the water is allowed to run without authority from the department shall constitute a separate offense.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 10, p. 849; C.S.1922, § 8460; C.S.1929, § 46-610; R.S.1943, § 46-254; Laws 1973, LB 186, § 9; Laws 1977, LB 40, § 257; Laws 2000, LB 900, § 119.

Cross References

Drover of livestock, duty to prevent damages, see section 54-305.

46-255 Ditches; construction through private property; bridges and gates.

Any person, constructing a ditch or canal through the lands of another, having no interest in such ditch or canal, shall build such ditch or canal in a substantial manner so as to prevent damage to such land. In all cases where necessary for the free and convenient use of lands on both sides of the ditch or canal by the owner or owners of such lands, the owner or those in control of such ditch shall erect substantial and convenient bridges across such canal or ditch, and they shall erect and keep in order suitable gates at the point of entrance and exit of such ditch through any enclosed field.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 11, p. 850; C.S.1922, § 8461; C.S.1929, § 46-611; R.S.1943, § 46-255.

Mandamus is proper remedy to compel construction of bridge over canal where title to the canal remains in the United States, but the canal is controlled by the defendant. *Nuss v. Pathfinder Irr. Dist.*, 214 Neb. 888, 336 N.W.2d 584 (1983).

Mandamus is proper remedy to compel construction of bridges over irrigation canal. *Crawford v. Central Nebraska P. & I. Dist.*, 154 Neb. 832, 49 N.W.2d 682 (1951).

Mandamus will lie in county where land is located to compel public power and irrigation district to construct bridge across one of its canals. *State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist.*, 140 Neb. 471, 300 N.W. 379 (1941).

Mandamus lies to compel owner of irrigation canal to erect bridge across canal whenever necessary for free and convenient

use by owner of lands on both sides. *State ex rel. Strever v. Dawson County Irr. Co.*, 102 Neb. 67, 165 N.W. 882 (1917).

Section applies whether owner owned property at time ditch or canal was built or subsequently acquired same by purchase. *State ex rel. O'Shea v. Farmers Irr. Dist.*, 98 Neb. 239, 152 N.W. 372 (1915), affirmed by *Farmers Irr. Dist. v. O'Shea*, 244 U.S. 325 (1917).

Injunction is proper remedy for preventing one, without authority, from crossing canal with lateral for purpose of carrying water from another canal to his land. *Castle Rock Irr. Canal & Water Power Co. v. Jurisch*, 67 Neb. 377, 93 N.W. 690 (1903); *Park v. Ackerman*, 60 Neb. 405, 83 N.W. 173 (1900).

46-256 Persons controlling canals or reservoirs; headgates and measuring devices; failure to construct; construction by Department of Natural Resources.

Persons owning or controlling any ditch, canal, or reservoir for the purpose of storing or using water for any purpose shall, upon thirty days' notice by the Department of Natural Resources, construct and maintain at the point of diversion a substantial headgate, of a design approved by the department, so built that it may be closed, or partially closed and fastened at any stage with lock or seal. They shall also construct a device for measuring and apportioning the water appropriated, which device shall be of a design approved by the department and built at the most practical point to be selected and fixed by it. If they neglect or refuse, for a period of ten days, to construct such headgate and measuring device, the department shall refuse to allow any water to be delivered to or used by or through any such ditch, canal, or reservoir or any other contrivance or device for appropriating, using, or storing water, and the department may construct bars, dams, or other obstructions to prevent such delivery or use.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 26, p. 844; C.S.1922, § 8445; C.S.1929, § 81-6326; R.S.1943, § 46-256; Laws 2000, LB 900, § 120.

Installation of measuring device was properly required as a condition to allowance of appropriation of water. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Appropriated waters should be measured at the point of diversion. *Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist.*, 142 Neb. 141, 5 N.W.2d 240 (1942).

46-257 Repealed. Laws 2005, LB 335, § 83.**46-258 Ditches; maintenance; outlets; headgates; duties of owner.**

Any owner or person in control of any ditch for irrigation purposes shall have the ditch in order to receive water from the source of supply on or before April 15 of each year, shall construct necessary outlets in the banks for the delivery of

water to all persons who are entitled to the same, and shall maintain a substantial headgate and measuring box or weir at the head of each lateral, which shall be constructed in accordance with plans and specifications approved by the Department of Natural Resources. A multiplicity of outlets shall be avoided. The outlet shall be at the most convenient and practicable point consistent with the protection and safety of the ditch and the efficient distribution of water among the various claimants thereof.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 12, p. 850; C.S.1922, § 8462; C.S.1929, § 46-612; R.S.1943, § 46-258; Laws 2000, LB 900, § 122.

This section does not affect the duty of irrigation district to furnish water, but only prescribes upon whom duty to construct outlets rests. *State ex rel. Clarke v. Gering Irr. Dist.*, 109 Neb. 642, 192 N.W. 212 (1923).

46-259 Running water in rivers and ravines; right to use.

The right to the use of running water flowing in any river or stream or down any canyon or ravine may be acquired by appropriation by any person.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 13, p. 850; C.S.1922, § 8463; C.S.1929, § 46-613; R.S.1943, § 46-259.

The right to appropriate water for irrigation purposes is limited to waters of natural streams. *Rogers v. Petsch*, 174 Neb. 313, 117 N.W.2d 771 (1962). *land. Vonburg v. Farmers Irr. Dist.*, 132 Neb. 12, 270 N.W. 835 (1937).

Under the irrigation act of 1889, a water right for purposes of irrigation need not have been attached to any particular tract of

46-260 Repealed. Laws 1987, LB 140, § 15.

46-261 Lands to be irrigated; appropriations transferred; information filed with Department of Natural Resources; recording gauges; failure to install; effect.

(1) The Department of Natural Resources may require an appropriator or his or her agent to furnish the department, by April 1 in any year, a list or map of all lands to be irrigated, the acreage of each tract, and the names of the owners, controllers, or officers for every ditch, reservoir, or other device for appropriating, diverting, carrying, or distributing water to be used as a basis for the distribution of water until April 1 of the following year, and if so ordered such a list or map shall be furnished by the appropriator or his or her agent to the department.

(2) By April 1, any district or company which has transferred an appropriation pursuant to sections 46-2,127 to 46-2,129 in the previous calendar year shall provide the department:

(a) A legal description and list or map of the tracts of land receiving and transferring an appropriation of water, or portion thereof, within the district or company;

(b) The water appropriation permit number under sections 46-233 to 46-235 and the priority date of the water appropriation;

(c) A statement on whether objections were filed, whether a hearing was held, and how consent was given;

(d) The effective date of the transfer of the appropriation; and

(e) A statement summarizing the water use on the receiving and transferring tracts of land.

(3) The department may require the owner or controller of any canal or ditch to install an approved recording gauge at one or more specific locations to record the amount of water used.

(4) For any appropriation not held by an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation or canal company, the department may require the owner of an appropriation for irrigation purposes to provide the department with any or all of the following information relative to the use of water under the appropriation during the previous irrigation season: (a) A list or map of all lands irrigated; (b) the acreage of each tract irrigated; (c) the rate at which water was diverted; (d) the amount diverted; (e) for any lands under the appropriation that were not irrigated, any sufficient cause, as described in section 46-229.04, which the appropriator claims was the reason for such nonuse; and (f) any other information needed by the department to properly monitor and administer use of water under the appropriation. If the appropriator claims sufficient cause for nonuse, he or she shall also provide the department with any evidence the department requires as a condition for accepting such claimed cause as sufficient cause to excuse nonuse.

(5) The department may deny an appropriator the right to any water to be delivered to or used by or through any ditch, reservoir, or other contrivance for the appropriation, use, or storage of water if the appropriator is not in compliance with this section, with subsection (2) of section 46-230, or with any conditions of any permit, notice, or order of the department concerning the appropriation. The department may construct bars or dams or may install such other devices as are necessary to prevent such delivery or use.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 15, p. 851; C.S.1922, § 8465; C.S.1929, § 46-615; R.S.1943, § 46-261; Laws 1979, LB 245, § 1; Laws 1981, LB 114, § 1; Laws 1995, LB 94, § 1; Laws 1995, LB 99, § 16; Laws 2000, LB 900, § 123; Laws 2004, LB 962, § 15.

Filing of acreage reports did not establish use of water for irrigation purposes. *Rogers v. Petsch*, 174 Neb. 313, 117 N.W.2d 771 (1962).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted, and that prior

appropriators will be protected as against subsequent appropriators. *State ex rel. Sorensen v. Mitchell Irr. Dist.*, 129 Neb. 586, 262 N.W. 543 (1935).

46-262 Duties of persons taking water; noncompliance; liability.

No person shall accept more water from any ditch, canal or reservoir than he is justly entitled to. On finding that he is receiving more water either through his headgates or by means of leaks, or by any other means, than he is entitled to receive he shall immediately take steps to prevent the same. If he knowingly permits such excess water to come upon his land, and fails to promptly notify the owner of such ditch, canal or reservoir, he shall be liable in damages to any person who shall be injured thereby.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 16, p. 851; C.S.1922, § 8466; C.S.1929, § 46-616; R.S.1943, § 46-262.

46-263 Water; neglecting and preventing delivery; penalty.

Any person having charge of a ditch or canal used for irrigation purposes, who shall neglect or refuse to deliver water as herein provided, or any person or persons who shall prevent or interfere with the proper delivery of water to

the person or persons having the right thereto, shall be guilty of a Class III misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 18, p. 853; C.S.1922, § 8468; C.S.1929, § 46-618; R.S.1943, § 46-263; Laws 1977, LB 40, § 259; Laws 1987, LB 140, § 9.

This section does not apply to persons who neglect or refuse to deliver water to those who have no right to the water. Weber v. North Loup River Pub. Power, 288 Neb. 959, 854 N.W.2d 263 (2014).

46-263.01 Water; molesting or damaging measuring device; penalty.

Any person, or persons, who shall molest, tamper with, break into or damage in any way any device used for the measuring and recording of the water flowing in any stream, canal or reservoir in this state shall be guilty of a Class II misdemeanor.

Source: Laws 1947, c. 172, § 3, p. 522; Laws 1969, c. 385, § 1, p. 1353; Laws 1977, LB 40, § 260.

46-263.02 Water; molesting or damaging measuring device; apprehension and conviction; reward.

The Department of Natural Resources is hereby authorized and empowered to offer and pay out of the fees collected by the department rewards of not to exceed twenty-five dollars in any case for the apprehension and conviction of any person or persons violating the provisions of section 46-263.01.

Source: Laws 1947, c. 172, § 4, p. 522; Laws 2000, LB 900, § 124.

46-264 Repealed. Laws 1973, LB 88, § 1.

46-265 Embankments; maintenance; return of unused water; duties of owner.

The owner or owners of any irrigation ditch or canal shall carefully maintain the embankments thereof so as to prevent waste therefrom, and shall return the unused water from such ditch or canal with as little waste thereof as possible to the stream from which such water was taken, or to the Missouri River.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 20, p. 854; C.S.1922, § 8470; C.S.1929, § 46-620; R.S.1943, § 46-265.

Diversion of water from one watershed to another is permissible under sections 46-206 and 46-265, R.R.S.1943, so long as the stream from which it is diverted is more than one hundred feet wide and the diversion is not contrary to the public interest. *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 206 Neb. 535, 294 N.W.2d 598 (1980).

This section deals with the return to stream of unused water transported in irrigation ditches to prevent waste. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Unused irrigation water must be returned to natural stream. *Kuhlmann v. Platte Valley Irr. Dist.*, 166 Neb. 493, 89 N.W.2d 768 (1958).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936).

The right of an appropriator to recapture seepage waters is not impliedly denied by this section. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

46-266 Irrigation water; overflow on roads; duty of owner to prevent; violation; penalty.

No owner of any water power or irrigation ditch, canal or lateral shall so construct, maintain or operate the same as to permit any water to escape therefrom upon any public road or highway. No person in the application of water in the irrigation of lands shall permit the same to escape from such lands

and to flow upon any public road or highway. Any person violating any of the provisions of this section shall be guilty of a Class V misdemeanor. Each day water is permitted to flow or escape upon any public road or highway in violation of the foregoing prohibitions shall be deemed a separate and distinct offense. The overseer of highways or other officer in charge of road work in the area in which a violation occurs shall make complaint therefor, but no other person shall be precluded from making complaint.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 21, p. 854; C.S.1922, § 8471; C.S.1929, § 46-621; R.S.1943, § 46-266; Laws 1959, c. 181, § 14, p. 660; Laws 1977, LB 40, § 261.

46-267 Repealed. Laws 2001, LB 170, § 30; Laws 2001, LB 173, § 22.

46-268 Contract for use of water; record; rights of grantee unimpaired by foreclosure of liens.

Whenever any person, association or corporation owning any irrigation ditch or canal enters into a contract with a landowner to carry water to any tract of land having a water appropriation, such carriage contract shall be recorded in the county where such land is situated in the same manner and under the same conditions as deeds for real estate. Such contract, from the date of the recording thereof, shall be binding upon the grantor, his, their or its successors or assigns, and all persons claiming any interest in such ditch or canal. No foreclosure or other proceedings to subject the property of the owner of such ditch or canal to the satisfaction of any lien or claim shall in any manner impair the right of such grantee, his heirs, administrators or assigns, to the use of the water from such ditch or canal in the quantity and manner provided in his deed or contract.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 23, p. 855; C.S.1922, § 8473; C.S.1929, § 46-623; R.S.1943, § 46-268; Laws 1947, c. 172, § 2, p. 522.

Purchaser of land is not personally liable for annual maintenance charge imposed by contract between his grantor and irrigation company. *Faught v. Platte Valley P. P. & I. Dist.*, 155 Neb. 141, 51 N.W.2d 253 (1952).

46-269 Mutual irrigation companies; recognized; bylaws; when lawful.

Any corporation or association organized under the laws of this state for the purpose of constructing and operating canals, reservoirs, and other works for irrigation purposes, and deriving no revenue from their operation, shall be termed a mutual irrigation company, and any bylaws adopted by such company, not in conflict herewith, shall be deemed lawful and so recognized by the courts of this state; *Provided*, such bylaws do not impair the rights of one shareholder over another.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 24, p. 855; C.S.1922, § 8474; C.S.1929, § 46-624; R.S.1943, § 46-269.

Mutual canal company possesses only those powers expressly or impliedly granted. *Thirty Mile Canal Co. v. Carskadon*, 160 Neb. 496, 70 N.W.2d 432 (1955).

Stockholder in mutual irrigation company cannot compel company to furnish him water without payment of his share of maintenance fund. *Swanger v. Porter*, 87 Neb. 764, 128 N.W. 516 (1910).

Duty of those in charge to operate so as to obtain profit applies to mutual irrigation company. *Robbins v. Winters Creek Canal Co.*, 109 F.2d 849 (8th Cir. 1940).

46-270 Irrigation projects; how financed.

Any corporation or association organized under the law of this state for the purpose of constructing and operating canals, reservoirs, and other works for

irrigation and water power purposes shall have power to borrow money, to issue bonds, and to mortgage its property and franchises in the same manner as railroad corporations.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 25, p. 855; Laws 1921, c. 271, § 1, p. 900; C.S.1922, § 8475; C.S.1929, § 46-625; R.S. 1943, § 46-270; Laws 2000, LB 900, § 125; Laws 2001, LB 420, § 31.

Landowner held not liable for increase in annual maintenance charge. *Faught v. Platte Valley P. P. & I. Dist.*, 155 Neb. 141, 51 N.W.2d 253 (1952).

to action. *Almeria Irr. Canal Co. v. Tzschuck Canal Co.*, 67 Neb. 290, 93 N.W. 174 (1903).

Irrigation companies have right to mortgage property, and mortgage can be foreclosed without making water users parties

46-271 Corporations or associations; construction or operation of canals or reservoirs; assessments of stock; when authorized; how enforced.

Any corporation or association organized under the laws of this state for the purpose of constructing or operating canals, reservoirs or other works for irrigation purposes may, through its board of directors or trustees, assess the shares, stock, or interest of the stockholders thereof for the purpose of obtaining funds to defray the necessary running expenses. Any assessments levied under this section shall become and be a lien upon the stock or interest so assessed. Such assessments shall, if not paid, become delinquent at the expiration of sixty days, and the stock or interest may be sold at public sale to satisfy such lien. Notice of such sale shall be published for three consecutive weeks prior thereto, in some newspaper published and of general circulation in the county where the office of the company is located. Upon the date mentioned in the advertisement, or upon the date to which the sale may have been adjourned, such stock or interest, or so much thereof as may be necessary to satisfy such lien and costs, shall be sold to the highest bidder for cash.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 26, p. 855; C.S.1922, § 8476; C.S.1929, § 46-626; R.S.1943, § 46-271; Laws 1996, LB 299, § 23.

Sale of stock is only method of collection of delinquent assessments. *Thirty Mile Canal Co. v. Carskadon*, 160 Neb. 496, 70 N.W.2d 432 (1955).

v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

This section does not apply to annual maintenance charge against party not claiming any interest in canal or ditch. *Faught*

Legislature cannot amend or change the law so as to make stock bought and fully paid for assessable. *Enterprise Ditch Co. v. Moffitt*, 58 Neb. 642, 79 N.W. 560 (1899).

46-272 Water users' associations organized under reclamation act of the United States; stock subscriptions; how recorded; fees.

The county clerk is hereby authorized to accept from water users' associations, organized in conformity with the requirements of the United States under the reclamation act, books containing printed copies of their articles of incorporation and forms of subscription to stock, and to use such books for recording the stock subscriptions of such associations. The charges for the recording thereof shall be made on the basis of the number of words actually written therein.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 29, p. 857; C.S.1922, § 8479; C.S.1929, § 46-629; R.S.1943, § 46-272.

46-273 Water; United States may furnish to individuals; conditions and requirements.

The United States of America is hereby authorized, in conformity to the laws of the State of Nebraska, to appropriate, develop, and store any unappropriated flood or unused waters, in connection with any project constructed by the United States pursuant to the provisions of an Act of Congress approved June 17, 1902, being An Act providing for the reclamation of arid lands (32 Stat. L. 388), and all acts amendatory thereof and supplemental thereto. When the officers of the United States Bureau of Reclamation determine that any water so developed or stored is in excess of the needs of the project as then completed or is flood or unused water, the United States may contract to furnish such developed, stored, flood, or unused water, under the terms and conditions imposed by Act of Congress and the rules and regulations of the United States, to any person who may have theretofore been granted a permit to appropriate a portion of the normal flow of any stream, if the water so appropriated shall, during some portion of the year, be found insufficient for the needs of the land to which it is appurtenant. The United States and every person entering into a contract as herein provided shall have the right to conduct such water into and along any of the natural streams of the state, but not so as to raise the waters thereof above the ordinary high water mark, and may take out the same again at any point desired, without regard to the prior rights of others to water from the same stream; but due allowance shall be made for losses in transit, the amount of such allowance to be determined by the Department of Natural Resources. The department shall supervise and enforce the distribution of such water so delivered with like authority and under the same provisions as in the case of general appropriators.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 28, p. 856; C.S.1922, § 8478; C.S.1929, § 46-628; R.S.1943, § 46-273; Laws 1955, c. 183, § 5, p. 517; Laws 1987, LB 140, § 10; Laws 2000, LB 900, § 126.

Contract restricting use of storage water by any one landowner to an amount sufficient to irrigate one hundred sixty acres was valid. *Frenchman Valley Irr. Dist. v. Smith*, 167 Neb. 78, 91 N.W.2d 415 (1958).

The scope of the appropriative rights in connection with a federal reclamation project are the same as those in connection with any irrigation canal, and includes the right to collect

seepage waters from any parts of the lands and to reapply them upon any other lands within the project and under the appropriation. *United States v. Tilley*, 124 F.2d 850 (8th Cir. 1941).

Injury to reclamation service, by taking seepage water which the United States had a contract to sell, may be enjoined. *Ramshorn Ditch Co. v. United States*, 269 F. 80 (8th Cir. 1920).

46-274 Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-275 Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-276 Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-277 Repealed. Laws 2005, LB 335, § 83.

46-278 Repealed. Laws 2005, LB 335, § 83.

(h) HOGS RUNNING IN LATERALS

46-279 Repealed. Laws 1987, LB 140, § 15.

46-280 Repealed. Laws 1987, LB 140, § 15.

(i) ARTESIAN WATER

46-281 Artesian water; waste prohibited.

It shall be unlawful for any owner or owners, lessee or lessees, occupier or occupiers, foreman or superintendent of any farm, town lot or other real estate in the State of Nebraska, where artesian water has been found or may be found hereafter, to allow the water from wells or other borings or drillings on any farm, town lot, or other real estate in Nebraska to flow out and run to waste in any manner to exceed what will flow or run through a pipe one-half of one inch in diameter, except where the water is first used for irrigation, or to create power for milling or other mechanical purposes.

Source: Laws 1897, c. 84, § 1, p. 358; R.S.1913, § 3527; C.S.1922, § 2927; C.S.1929, § 46-172; R.S.1943, § 46-281.

46-282 Artesian water; waste; penalty.

Any person or persons who own, occupy or have control of any farm, town lot or other real estate in the State of Nebraska, who fail or refuse to close or shut off any wastage of artesian water to the amount that section 46-281 allows on any farm, town lot or other real estate which they own, occupy or have control of, after being notified in writing by any person having the benefit of such mutual artesian water supply, within forty-eight hours after such notification, shall be subject to arrest, and shall be guilty of a Class V misdemeanor; and if such wastage be not abated within twenty-four hours after such arrest and conviction, it shall be a second offense against the provisions of section 46-281 and be subject to the same fine as for the first offense. Every like offense or neglect of each twenty-four hours thereafter shall be considered an additional offense against the provisions of section 46-281.

Source: Laws 1897, c. 84, § 2, p. 358; R.S.1913, § 3528; C.S.1922, § 2928; C.S.1929, § 46-173; R.S.1943, § 46-282; Laws 1977, LB 40, § 264.

(j) WATER REUSE PITS

46-283 Legislative findings.

The Legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within ephemeral natural streams.

Source: Laws 1980, LB 908, § 1; Laws 2008, LB798, § 1.

46-284 Definitions, sections found.

For purposes of sections 46-283 to 46-287, unless the context otherwise requires, the definitions found in sections 46-285 and 46-286 shall be used.

Source: Laws 1980, LB 908, § 2.

46-285 Irrigation water reuse pit, defined.

Irrigation water reuse pit shall mean an excavation constructed to capture, for reuse, runoff resulting from ground water irrigation or a structure designed for the purpose of water impoundment which is used for this same purpose so long as the capacity of the facility does not exceed fifteen acre-feet.

Source: Laws 1980, LB 908, § 3.

46-286 Ephemeral natural stream, defined.

An ephemeral natural stream shall mean that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation. The portion of a natural stream that is shown as an intermittent stream on the most recent United States Geological Survey topographic quadrangle map published prior to July 18, 2008, shall be considered an ephemeral natural stream unless the Department of Natural Resources has investigated the stream and determined that the stream or a reach of the stream is perennial or intermittent and subject to Chapter 46, article 2. The department's determination for the purposes of this section shall be adopted and promulgated in rule or regulation.

Source: Laws 1980, LB 908, § 4; Laws 2006, LB 508, § 1; Laws 2008, LB798, § 2.

46-287 Irrigation water reuse pit; reusing ground water; exempt from certain provisions.

Notwithstanding any other provision of law, any person intending to or in the process of reusing ground water from an irrigation water reuse pit located within an ephemeral natural stream shall be exempt from the provisions of Chapter 46, article 2, which would otherwise apply to such pits, and from the provisions of section 46-637.

Source: Laws 1980, LB 908, § 5; Laws 2008, LB798, § 3.

(k) INTERBASIN TRANSFERS

46-288 Interbasin transfers; terms, defined.

For purposes of this section and section 46-289, unless the context otherwise requires:

- (1) Basin of origin shall mean the river basin in which the point or proposed point of diversion of water is located;
- (2) Beneficial use shall include, but not be limited to, reasonable and efficient use of water for domestic, municipal, agricultural, industrial, commercial, power production, subirrigation, fish and wildlife, ground water recharge, interstate compact, water quality maintenance, or recreational purposes. Nothing in this subdivision shall be construed to affect the preferences for use of surface water as provided in section 46-204;
- (3) Interbasin transfer shall mean the diversion of water in one river basin and the transportation of such water to another river basin for storage or utilization for a beneficial use; and
- (4) River basin shall mean any of the following natural hydrologic basins of the state as shown on maps located in the Department of Natural Resources: (a) The White River and Hat Creek basin; (b) the Niobrara River basin; (c) the Platte River basin, including the North Platte and South Platte River basins, except that for purposes of transfer between the North and South Platte River basins each shall be considered a separate river basin; (d) the Loup River basin; (e) the Elkhorn River basin; (f) the Republican River basin; (g) the Little Blue River basin; (h) the Big Blue River basin; (i) the Nemaha River basin; and (j) the Missouri tributaries basin.

Source: Laws 1981, LB 252, § 5; Laws 1993, LB 789, § 3; Laws 2000, LB 900, § 129.

46-289 Legislative findings; interbasin transfers; application for water; factors considered; order issued.

The Legislature finds, recognizes, and declares that the transfer of water to outside the boundaries of a river basin may have impacts on the water and other resources in the basin and that such impacts differ from those caused by uses of water within the same basin in part because any unused water will not be returned to the stream from which it is taken for further use in that river basin. The Legislature therefor recognizes the need to delineate factors for consideration by the Director of Natural Resources when evaluating an application made pursuant to section 46-233 which involves an interbasin transfer of water in order to determine whether denial of such application is demanded by the public interest. Those considerations shall include, but not be limited to, the following factors:

- (1) The economic, environmental, and other benefits of the proposed interbasin transfer and use;
- (2) Any adverse impacts of the proposed interbasin transfer and use;
- (3) Any current beneficial uses being made of the unappropriated water in the basin of origin;
- (4) Any reasonably foreseeable future beneficial uses of the water in the basin of origin;
- (5) The economic, environmental, and other benefits of leaving the water in the basin of origin for current or future beneficial uses;
- (6) Alternative sources of water supply available to the applicant; and
- (7) Alternative sources of water available to the basin of origin for future beneficial uses.

The application shall be deemed in the public interest if the overall benefits to the state and the applicant's basin are greater than or equal to the adverse impacts to the state and the basin of origin. The director's order granting or denying an application shall specify the reasons for such action, including a discussion of the required factors for consideration, and shall document such decision by reference to the hearing record, if any, and to any other sources used by the director in making the decision.

Source: Laws 1981, LB 252, § 6; Laws 1986, LB 309, § 2; Laws 2000, LB 900, § 130.

The provisions of this section are not applicable to instream flow applications. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994). *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 210 Neb. 862, 317 N.W.2d 726 (1982).

This statute establishes a procedure to be followed in determining whether an appropriation application must be denied.

(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.

46-291 Application; review; notice; contents; comments.

(1) Upon receipt of an application filed under section 46-290 for a transfer in the location of use of an appropriation, the Department of Natural Resources

shall review it for compliance with this subsection. The Director of Natural Resources may approve the application without notice or hearing if he or she determines that: (a) The appropriation is used and will continue to be used exclusively for irrigation purposes; (b) the only lands involved in the proposed transfer are (i) lands within the quarter section of land to which the appropriation is appurtenant, (ii) lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant, or (iii) lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (c) after the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer; (d) all the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (e) the transfer will not result in a change in the point of diversion or the point of diversion will be changed but the change meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion will not move above or below a tributary stream or a constructed river return or a constructed drain; and (f) the transfer will not diminish the water supply available for or otherwise adversely affect any other surface water appropriator. If transfer of an appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as such transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental underground water storage area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (1)(f) of this section.

(2) If after reviewing an application filed under section 46-290 the director determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's website, to be sent by certified mail to each holder of a mortgage, trust deed, or other equivalent consensual security interest that is identified by the applicant pursuant to subdivision (1)(b)(v) of section 46-290 and to any entity owning facilities currently used or proposed to be used for purposes of diversion or delivery of water under the appropriation, and to be published at the applicant's expense at least once each week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the appropriation is appurtenant and, if applicable, in at least one newspaper of general circulation in each county containing lands to which the appropriation is proposed to be transferred.

(3) The notice shall contain: (a) A description of the appropriation; (b) the number assigned to such appropriation in the records of the department; (c) the date of priority; (d) if applicable, a description of the land or stream reach to

which such water appropriation is proposed to be transferred; (e) if applicable, the type of appropriation to which the appropriation is proposed to be changed; (f) if applicable, the proposed change in the purpose of use; (g) whether the proposed transfer or change is to be permanent or temporary and, if temporary, the duration of the proposed transfer or change; and (h) any other information the director deems relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

(4) The notice shall state (a) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (b) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication of the notice.

(5) Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of any county containing land to which the appropriation is appurtenant and, if applicable, the county board of any county containing land to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in such county. The filing of any such comments by a county board shall not make the county a party in the application process, but such comments shall be considered by the director in determining pursuant to section 46-294 whether the proposed transfer or change is in the public interest.

Source: Laws 1983, LB 21, § 3; Laws 2000, LB 900, § 132; Laws 2004, LB 962, § 17; Laws 2006, LB 1226, § 11; Laws 2008, LB798, § 4; Laws 2009, LB477, § 2.

46-292 Application; hearing.

The Department of Natural Resources may hold a hearing on an application filed under section 46-290 on its own motion and shall hold a hearing if a timely request therefor is filed by any interested person in accordance with section 46-291. Any such hearing shall be subject to section 61-206.

Source: Laws 1983, LB 21, § 4; Laws 2000, LB 900, § 133; Laws 2004, LB 962, § 18.

46-293 Application; review; Director of Natural Resources; powers.

(1) The Director of Natural Resources shall independently review each application subject to subsection (2) of section 46-291 to determine whether the requirements of section 46-294 will be met if the transfer or change is approved. The requirement of this subsection is not altered when there are objectors who have become parties to the proposed transfer or change, but if a hearing is called by the Department of Natural Resources on its own motion or as the result of a request therefor filed in accordance with subsection (4) of section 46-291, any evidence considered by the director in making such determinations shall be made a part of the record of the hearing as provided in section 84-914.

(2) Either on his or her own motion or in response to objections or comments received pursuant to subsection (4) or (5) of section 46-291, the director may require the applicant to provide additional information before a hearing will be scheduled or, if no hearing is to be held, before the application will receive further consideration. The information requested may include economic, social,

or environmental impact analyses of the proposed transfer or change, information about the amount of water historically consumed under the appropriation, copies of any plans for mitigation of any anticipated adverse impacts that would result from the proposed transfer or change, and such other information as the director deems necessary in order to determine whether the proposed transfer or change is consistent with section 46-294.

Source: Laws 1983, LB 21, § 5; Laws 2000, LB 900, § 134; Laws 2004, LB 962, § 19.

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.

46-294.01 Appropriation; temporary transfer; filings required.

Whenever a temporary transfer is approved in accordance with sections 46-290 to 46-294, the applicant shall, within sixty days after the order of approval of the Department of Natural Resources, cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) The permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effected; and (3) the order of the Director of Natural Resources approving the temporary transfer. Whenever renewal of a temporary transfer is approved pursuant to section 46-294.02, the applicant shall, within sixty days after such approval, cause a copy of the order of the director approving such renewal to be filed with the county clerk or register of deeds of such county. Such documents shall be indexed to the land subject to the appropriation prior to the transfer. The applicant shall file with the department, within ninety days after the department's order of approval, proof of filing with the county clerk or register of deeds. Failure to file such proof of filing within such ninety-day time period shall be grounds for the director to negate any prior approval of the transfer or renewal.

Source: Laws 2004, LB 962, § 21; Laws 2006, LB 1226, § 12.

46-294.02 Appropriation; temporary transfer or change; renewal or extension.

A temporary transfer or a change in the type or purpose of use of an appropriation may be renewed or otherwise extended by the parties thereto at any time following the midpoint of the transfer or change term, but any such renewal or extension is subject to review and approval pursuant to sections 46-290 to 46-294. No renewal or extension shall cause the term of any such temporary transfer or change to exceed thirty years in duration from the date the renewal or extension is approved by the Director of Natural Resources.

Source: Laws 2004, LB 962, § 22.

46-294.03 Appropriation; temporary transfer or change; effect on classification and valuation.

For purposes of assessment pursuant to sections 77-1343 to 77-1363, neither the temporary transfer or change of an appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause the land to be reclassified to a lower value use or the valuation of the land to be reduced, but the land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of the land after the transfer.

Source: Laws 2004, LB 962, § 23.

46-294.04 Appropriation; temporary transfer or change; effect on rights of condemnation.

During the time within which a temporary transfer or change in purpose of use of an appropriation is in effect, the appropriation may not be used to invoke any rights of condemnation that are based on preference of use, but such appropriation shall be subject to the exercise of such rights by owners of other appropriations that are for water uses superior to the pretransfer or prechange use of the water under the transferred or changed appropriation.

Source: Laws 2004, LB 962, § 24.

46-294.05 Rules and regulations.

The Director of Natural Resources may adopt and promulgate rules and regulations to carry out sections 46-290 to 46-294.04.

Source: Laws 2004, LB 962, § 25.

(m) UNDERGROUND WATER STORAGE

46-295 Legislative findings.

The Legislature recognizes that, as a result of water project operations, surface water in some areas of the state has been, is, and will be in the future intentionally and incidentally stored in and withdrawn from underground strata. The Legislature acknowledges that rights to water intentionally or incidentally stored underground and rights to withdrawal of such water should be formally recognized and quantified and recognizes the propriety of all

beneficiaries proportionately sharing, to the extent of potential benefit from intentional underground water storage, in the financial obligations necessary for construction, operation, and maintenance of water projects which cause intentional underground water storage.

The Legislature finds that uses of water for incidental and intentional underground water storage are beneficial uses of water which contribute to the recharge of Nebraska's aquifers and that comprehensive, conjunctive management of surface water and intentional or incidental underground water storage is essential for the continued economic prosperity and well-being of the state, serves the public interest by providing an element of certainty essential for investment in water resources development, and will improve Nebraska's standing in the event of interstate dispute.

To facilitate optimum beneficial use of water by the people of Nebraska, the Legislature recognizes the need for authorizing the recognition of incidental underground water storage, for authorizing intentional underground water storage, and for authorizing the levying and collection of fees and assessments on persons who withdraw or otherwise use or benefit from intentional underground water storage as provided in sections 46-299 to 46-2,106.

Nothing in sections 46-202, 46-226.01, 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-295 to 46-2,106, 46-544, and 46-712 shall be construed to alter existing statutes regarding the relationship between naturally occurring surface and ground water.

Source: Laws 1983, LB 198, § 1; Laws 1985, LB 488, § 6; Laws 1989, LB 45, § 2; Laws 1996, LB 108, § 4; Laws 2000, LB 900, § 136; Laws 2004, LB 962, § 26.

46-296 Terms, defined.

For purposes of sections 33-105, 46-202, and 46-295 to 46-2,106, unless the context otherwise requires:

- (1) Department means the Department of Natural Resources;
- (2) Director means the Director of Natural Resources;
- (3) Person means a natural person, partnership, limited liability company, association, corporation, municipality, or agency or political subdivision of the state or of the federal government;
- (4) Underground water storage means the act of storing or recharging water in underground strata. Such water shall be known as water stored underground but does not include ground water as defined in section 46-706 which occurs naturally;
- (5) Intentional underground water storage means underground water storage which is an intended purpose or result of a water project or use. Such storage may be accomplished by any lawful means such as injection wells, infiltration basins, canals, reservoirs, and other reasonable methods; and
- (6) Incidental underground water storage means underground water storage which occurs as an indirect result, rather than an intended or planned purpose, of a water project or use and includes, but is not limited to, seepage from reservoirs, canals, and laterals, and deep percolation from irrigated lands.

Source: Laws 1983, LB 198, § 2; Laws 1985, LB 488, § 7; Laws 1993, LB 121, § 277; Laws 1996, LB 108, § 5; Laws 2000, LB 900, § 137; Laws 2004, LB 962, § 27.

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.

46-298 Repealed. Laws 1989, LB 45, § 6.**46-299 Permittee; authorized to levy a fee or assessment; limitation.**

Any person who has obtained a permit for intentional underground water storage and recovery of such water pursuant to section 46-233, 46-240, 46-241, 46-242, or 46-297 may, subject to section 46-2,101, levy a fee or assessment against any person for the right or probable right to withdraw or otherwise use such stored water. Such fee or assessment may be levied against any land in connection with which such underground water storage has occurred or probably will occur, and may be varied based on the degree to which underground water storage has occurred or will occur. No fee or assessment shall represent more than the fair market value of such recharge, except that a fee or assessment may include a sum sufficient to amortize the operation, maintenance, repair, and capital costs of the project, apportioned on the degree to which recharge has occurred or is likely to occur, and on the degree to which any surface water is delivered.

Source: Laws 1983, LB 198, § 13; Laws 2008, LB798, § 5.

46-2,100 Fee or assessment; limitation.

No fee or assessment may be levied pursuant to section 46-299 for withdrawals from wells with a capacity of less than one hundred gallons per minute which are solely for domestic purposes as defined in section 46-613.

Source: Laws 1983, LB 198, § 14; Laws 1989, LB 45, § 3.

46-2,101 Fee or assessment; application for approval; contents; fee schedule.

(1) Any person intending to levy fees or assessments in accordance with section 46-299 or to modify such fees or assessments shall, prior to levying such fees, assessments, modified fees, or modified assessments, file with the department an application for approval of authority to levy such fees on a form prescribed and furnished by the department.

(2) Such an application shall include a fee schedule and the following information:

- (a) The source of the water stored or to be stored underground;
- (b) The underground water storage method;
- (c) The relative amounts of water stored or to be stored underground and naturally occurring ground water;

(d) The data or reference studies used by the applicant to determine the underground water storage;

(e) A description of the areas served or to be served by the water stored underground;

(f) The amount of surface water, if any, for which the applicant has an appropriation; and

(g) The manner, use, and location of any such surface water appropriation.

The application shall be processed under the applicable rules and regulations of the department adopted and promulgated pursuant to section 61-206.

(3) An application shall be approved if the fees, assessments, modified fees, or modified assessments appear reasonable and comply with the requirements of section 46-299.

(4) The department shall review approved fee schedules every five years after approval to determine whether the fees should be increased, decreased, or eliminated, except that if the adopted schedules have been pledged to repayment of financing for the project, the department shall only review after repayment is completed.

Source: Laws 1983, LB 198, § 15; Laws 1985, LB 488, § 9; Laws 1989, LB 45, § 4; Laws 2000, LB 900, § 138.

46-2,102 Fee or assessment; lien.

A fee or assessment levied pursuant to section 46-299 shall become a lien on the property benefited, or to be benefited, thirty days after the due date of such fee or assessment. The person levying the fee or assessment may collect such fee or assessment if it remains unpaid after thirty days after the due date by commencing an action in district court against the owner of the land benefited or to be benefited to foreclose the lien or to recover the amount due, except that no lien shall become effective until notice thereof is filed with the register of deeds in the county in which the benefited property is located and such lien shall relate back only to the date of filing.

Source: Laws 1983, LB 198, § 16; Laws 1989, LB 45, § 5.

46-2,103 Injunction; when issued.

Any person who has obtained approval of fees or assessments pursuant to section 46-2,101, may commence an action to enjoin any person from withdrawing or otherwise using the stored water if the person has not entered into an agreement to pay fees or assessments for such stored water, or has failed and refused to pay a fee or assessment for a period of thirty days from and after the due date of the fee or assessment. No injunction may be obtained against withdrawals from wells with a capacity of less than one hundred gallons per minute which are solely for domestic uses as defined in section 46-613.

Source: Laws 1983, LB 198, § 17.

46-2,104 Director's order; not subject to collateral attack.

If an action is commenced pursuant to section 46-2,102 or 46-2,103, an order of the director identifying water stored or to be stored underground, or approving fees or assessments, may not be collaterally attacked.

Source: Laws 1983, LB 198, § 18.

46-2,105 Appeal.

Any person aggrieved by a decision made or an order issued by the director pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-297, or 46-2,101 may appeal as provided in section 61-207.

Source: Laws 1983, LB 198, § 19; Laws 2000, LB 900, § 139.

46-2,106 Use of underground stored water; authorized.

Any person may use water stored incidentally or intentionally underground for which the appropriate permits have not been obtained or for which approval of fees has not been obtained pursuant to section 46-2,101.

Source: Laws 1983, LB 198, § 20.

(n) INSTREAM APPROPRIATIONS

46-2,107 Legislative findings.

The Legislature finds that the maintenance, conservation, management, storage, and timely release of the waters of the natural streams within the State of Nebraska are in the public interest and are practices essential to the well-being of present and future generations. In furtherance of these practices, the public interest demands the recognition of instream uses for fish, recreation, and wildlife. The Legislature also finds that proposals for future water development should fully consider multiple uses, including instream flows whether from natural flow or from reservoir releases, and recognizes the positive impact of impoundments which can provide significant instream flow benefits.

Source: Laws 1984, LB 1106, § 23.

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4, 5, or 6. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

46-2,108 Appropriation of water for instream flows; terms, defined.

(1) For purposes of sections 46-2,107 to 46-2,119, unless the context otherwise requires:

(a) Department means the Department of Natural Resources;

(b) Director means the Director of Natural Resources; and

(c) Instream appropriation means the undiverted application of the waters of a natural stream within or bordering upon the state for recreation or fish and wildlife purposes.

(2) An instream appropriation may be obtained only by the Game and Parks Commission or a natural resources district and only for that amount of water necessary for recreation or fish and wildlife. The instream use of water for recreation or fish and wildlife shall be considered a beneficial use of water.

Source: Laws 1984, LB 1106, § 24; Laws 1985, LB 102, § 13; Laws 1997, LB 877, § 1; Laws 2000, LB 900, § 140.

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.

46-2,110 Permit to appropriate water for instream flows; application; requirements.

Following notice and a public hearing, any natural resources district or the Game and Parks Commission may file with the director an application for a permit to appropriate water for instream flows in each stream segment identified pursuant to section 46-2,109. The application shall include the locations on the stream at which the need for instream flows begins and ends and the time of year when instream flows are most critical. The application shall also provide a detailed description of the amount of water necessary to provide adequate instream flows.

Source: Laws 1984, LB 1106, § 26; Laws 1985, LB 102, § 15; Laws 2000, LB 900, § 142.

46-2,111 Permit to appropriate water for instream flows; director; powers and duties.

(1) The Legislature finds that instream appropriations for recreation, fish, and wildlife should consider preferences among different uses and that all appropriations should consider the possible legal relationship between surface water and ground water. Thus the Legislature finds that, since such issues have not been fully considered, the director shall not grant any permit to appropriate water, except as specified in subsection (2) of this section, before January 1, 1997, for any application pending on or filed after June 2, 1995.

(2) The director may grant applications for (a) appropriations for flood control or sediment control structures which will not make or cause to be made any consumptive use of the impounded water, (b) applications for temporary appropriations for public construction that are five cubic feet per second or less, or (c) applications by public water suppliers for induced ground water recharge appropriations pursuant to sections 46-233 to 46-238.

Source: Laws 1995, LB 871, § 5; Laws 2000, LB 900, § 143.

46-2,112 Permit to appropriate water for instream flows; hearing; when; notice; director; powers.

A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of a pending review shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not later than fourteen years and ten months after the permit was granted or after the date of the director's action following the last such review, whichever is later, and such notice shall be mailed to the appropriator of record and posted on the department's website. The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to such

review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. The appropriator of record shall, within the six-week period, file written documentation of the continued use of the appropriation. If no requests for hearing are received and if the director is satisfied with the information provided by the appropriator of record that the appropriation continues to be beneficially used and is in the public interest, the director shall issue an order stating such findings. If requested by any interested person, or on his or her own motion based on the comments and information filed, the director shall schedule a hearing. If a hearing is held, the purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

Source: Laws 1997, LB 877, § 2; Laws 2000, LB 900, § 144; Laws 2004, LB 962, § 28; Laws 2006, LB 1226, § 13.

46-2,113 Director; modify appropriation or application; when.

It is in the state's and the public interest that the filing of the following classes of applications before the department demand that the director shall appropriately modify any existing or pending instream appropriation or application to not interfere with such application or the granting of such appropriation:

- (1) Applications for induced recharge to public water supply wells;
- (2) Applications for storage rights necessary for flood and sediment control projects which are dry or will not result in a net consumption of water exceeding two hundred acre-feet on an average annual basis;
- (3) Applications for transfer permits associated with natural flow, storage use, power generation, or hydropower;
- (4) Applications for de minimis uses; or
- (5) Applications for industrial or manufacturing de minimis consumptive uses.

Source: Laws 1997, LB 877, § 3; Laws 2000, LB 900, § 145.

46-2,114 Proposed instream appropriation; additional studies; notice of application.

Prior to taking action on an application for an instream appropriation, the director shall conduct any studies he or she deems necessary to evaluate the application and shall publish notice of such application at the applicant's expense at least once a week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. The notice shall state that any person having an interest may in writing object to and request a hearing on the application. Any

such objection and request for hearing shall be filed with the department within two weeks of final publication of the notice.

Source: Laws 1984, LB 1106, § 30; Laws 1985, LB 102, § 16; Laws 1987, LB 140, § 11; Laws 1991, LB 278, § 2; Laws 2000, LB 900, § 146.

46-2,115 Application for instream appropriation; approval; when.

An application for an instream appropriation which is pending on or filed after January 1, 1997, shall be approved by the director if he or she finds that:

- (1) In order to allow for future beneficial uses, there is unappropriated water available to provide the approved instream flow rate at least twenty percent of the time during the period requested;
- (2) The appropriation is necessary to maintain the existing recreational uses or needs of existing fish and wildlife species;
- (3) The appropriation will not interfere with any senior surface water appropriation;
- (4) The rate and timing of the flow is the minimum necessary to maintain the existing recreational uses or needs of existing fish and wildlife species; and
- (5) The application is in the public interest.

The application may be granted for a rate of flow that is less than that requested by the applicant or for a shorter period of time than requested by the applicant.

Source: Laws 1984, LB 1106, § 31; Laws 1985, LB 102, § 17; Laws 1997, LB 877, § 4; Laws 2000, LB 900, § 147.

To find that there is sufficient unappropriated water available under subsection (1) of this section, the director is not required to consider future ground water depletion. To find that there is sufficient unappropriated water available under subsection (1) of this section, the director must account for water which may be diverted by pending senior applications and approved-but-unconstructed senior applications. To find that there is sufficient unappropriated water available under subsection (1) of this section, the director must find that there is enough water that is not subject to beneficial use elsewhere. The director is permitted to base this finding on historical flow data. For a water supply to be "available" within the meaning of subsection (1) of this section, the water supply must be fairly dependable and continuous. In the context of an instream flow application to maintain existing wildlife habitats, "fairly dependable and continuous" means the flow regime which the species can bear. A party can show noninterference, under subsection (3) of this section, by showing that the sought-after appropriation will be (1) an undiverted application (2) of the waters of a natural stream within or bordering upon the state (3) for recreation or fish and wildlife purposes. In order to provide a clear basis for an order granting or denying an instream flow application, the Director of Water

Resources is required to discuss each of the elements listed in this section. However, the director is not required to include, as part of his public interest analysis, a discussion of forgone uses. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

Subsection (2) of this section does not require a showing of an imminent threat to the use for which protection is sought, but requires a finding of a sufficient causal link between maintaining the flow and maintaining the use for which the flow is requested. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

When an instream flow application requests different flow rates at different locations along a single stream segment, the denial of the application as one location is to be viewed as a reduction in the requested rate of flow as authorized by this section. Any reduction in the length of the stream segment occasioned by such denial is but incidental to the flow reduction, and the director may define the stream segment under section 46-2,118(1) in such a way as to reflect the appropriations as granted. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

46-2,116 Application for instream appropriation; public interest determination; factors.

In determining whether an application for an instream appropriation is in the public interest, the director shall consider the following factors:

- (1) The economic, social, and environmental value of the instream use or uses including, but not limited to, recreation, fish and wildlife, induced recharge for municipal water systems, and water quality maintenance; and

(2) The economic, social, and environmental value of reasonably foreseeable alternative out-of-stream uses of water that will be foregone or accorded junior status if the appropriation is granted.

Source: Laws 1984, LB 1106, § 32; Laws 1985, LB 102, § 18; Laws 1991, LB 772, § 5.

Subsection (1) of this section does not require that all the factors considered be reduced to economic terms. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

This section does not require the director to document his decision to the hearing record in determining whether an appli-

cation for an instream appropriation is in the public interest. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

46-2,116.01 Application for instream appropriation; use of stored water; study.

If the director determines that there is insufficient unappropriated natural flow available for an application for an instream appropriation and if the applicant consents, the department may conduct a study to determine whether the instream flow needs can be met through the use of stored water in new storage facilities. The study shall address the availability of storage sites, the estimated cost of providing any required storage, and such other findings and conclusions as the department deems appropriate.

Source: Laws 1985, LB 102, § 19; Laws 1991, LB 772, § 6; Laws 2000, LB 900, § 148.

46-2,116.02 Instream appropriation; use of stored water; funding.

If the department determines that instream flow needs can be met through the use of stored water in new storage facilities after a study conducted under section 46-2,116.01, the applicant may request financial assistance for the construction of necessary storage facilities from the Nebraska Resources Development Fund. The cost of the project may be shared with any other users of the stored water.

Source: Laws 1985, LB 102, § 20; Laws 1991, LB 772, § 7; Laws 2000, LB 900, § 149.

46-2,117 Contested case hearing; mediation or nonbinding arbitration required; when; costs.

The director shall not conduct a contested case hearing on an instream appropriation application filed after January 1, 1997, other than a hearing to address procedural matters, until such time as the parties have completed mediation or nonbinding arbitration. Mediation or nonbinding arbitration shall be deemed completed when the person retained to conduct the mediation or nonbinding arbitration has concluded further efforts would probably not result in resolution of major issues. The costs of mediation or nonbinding arbitration shall be shared by the parties.

Source: Laws 1997, LB 877, § 5; Laws 2000, LB 900, § 150.

46-2,118 Instream appropriation; limited to defined stream segment.

(1) All water used to provide instream flows shall be applied only to that segment of the stream for which the appropriation is granted. The stream segment and the determination of a reasonable and necessary amount of water

required for instream flow purposes shall be defined specifically by the director in the permit.

(2) After the water allowed for instream flows has passed through the defined stream segment, all rights to such water shall be deemed relinquished and the water shall be available for appropriation.

Source: Laws 1984, LB 1106, § 34; Laws 2000, LB 900, § 151.

When an instream flow application requests different flow rates at different locations along a single stream segment, the denial of the application as to one location is to be viewed as a reduction in the requested rate of flow as authorized by section 46-2,115. Any reduction in the length of the stream segment

occasioned by such denial is but incidental to the flow reduction, and the director may define the stream segment under subsection (1) of this section in such a way as to reflect the appropriations as granted. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

46-2,119 Instream appropriations; manner of administration.

Instream appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. Reservoirs shall not be required by the director to release, for the benefit of an instream appropriation, water previously impounded in accordance with section 46-241 or 46-243. Reservoirs with storage rights senior to an instream appropriation shall not be required to pass, for the benefit of that instream appropriation, inflows that could be stored by such reservoir if the instream appropriation were not in effect. Notwithstanding subsection (5) of section 46-241, a reservoir with storage rights senior to an instream appropriation also shall not be required to pass inflows for downstream direct irrigation if the appropriation for direct irrigation is junior to and would be denied water because of that instream appropriation. Instream appropriations may be canceled as provided in sections 46-229.02 to 46-229.05.

Source: Laws 1984, LB 1106, § 35; Laws 1988, LB 953, § 1; Laws 2000, LB 900, § 152; Laws 2004, LB 962, § 29.

(o) TRANSFER OF APPROPRIATIONS

46-2,120 District or company; notice to landowner; when required; terms, defined.

(1) Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company using the procedure described in sections 46-2,121 to 46-2,129 and which is exempt from the Open Meetings Act shall provide notice by mail to each owner of land in the district or served by the company not less than seven days before any meeting or hearing under sections 46-2,121 to 46-2,129.

(2) For purposes of sections 46-2,120 to 46-2,130:

- (a) Department means the Department of Natural Resources; and
- (b) Director means the Director of Natural Resources.

Source: Laws 1995, LB 99, § 1; Laws 2000, LB 900, § 153; Laws 2004, LB 821, § 12.

Cross References

Open Meetings Act, see section 84-1407.

46-2,121 District or company; hold appropriation; sections; how construed.

Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company shall hold

all water appropriations filed in the district's or company's name for the benefit of the owners of land to which the water appropriations are attached. Sections 46-2,120 to 46-2,129 shall not be construed to modify the rights of landowners to any water appropriation.

Source: Laws 1995, LB 99, § 2.

46-2,122 District or company; application for transfer and map; filing requirements; approval; conditions.

(1) Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may file an application for transfer and a map with the department identifying all tracts of lands that have received water delivered by the district or company and beneficially applied to the tract in at least one of the preceding ten consecutive years. The application for transfer and map shall be prepared and filed in accordance with the rules and regulations of the department.

(2) Any tract of land within the boundaries of the district or served by the company may receive a water appropriation, or portion thereof, transferred from a tract or tracts of land currently under the appropriation on file with the department. The director shall grant the transfer if:

(a) The owner of the land to which the water appropriation is attached and the owner of the ditch, canal, or other diverting works subject to transfer consent in writing to the department to the transfer of the appropriation from the tract of land;

(b) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops;

(c) The water will be applied on the receiving tract to a use in the same preference category as the use on the transferring tract; and

(d) The aggregate water use within the district or company after transfer will not exceed the aggregate water appropriation held by the district or company for the benefit of the owners of land to which the water appropriations are attached.

Source: Laws 1995, LB 99, § 3; Laws 2000, LB 900, § 154.

46-2,123 Hearing on application and map.

The department may hold a hearing on the application for transfer and map under section 46-2,122 if the department determines that a hearing is necessary to determine whether the application for transfer and map are in compliance with such section. The department shall hold a hearing on the application if requested by any owner of land within the district or served by the company. The hearing shall be conducted in accordance with section 61-206 and the rules and regulations of the department.

Source: Laws 1995, LB 99, § 4; Laws 2000, LB 900, § 155.

46-2,124 District or company; notice prior to meeting; requirements.

Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company intending to

file an application for transfer and a map with the department under section 46-2,122 shall give notice prior to the meeting at which the application and map will be approved for filing. Notice shall be given in the manner provided in section 46-2,128.

Source: Laws 1995, LB 99, § 5; Laws 2000, LB 900, § 156.

46-2,125 Order granting application and map; contents; appeal.

After an investigation and hearing, if applicable, the director shall issue an order granting or denying the application for transfer and map under section 46-2,122. The director shall deny the application if the conditions in subsection (2) of such section are not met. An order granting or denying an application for transfer and map shall be in writing and shall specify the following:

- (1) The tracts of land retaining an appropriation;
- (2) The tracts of land receiving an appropriation; and
- (3) The tracts of land transferring an appropriation.

An appeal may be taken from the decision of the department on the application for transfer and map as provided in section 61-207.

Source: Laws 1995, LB 99, § 6; Laws 2000, LB 900, § 157.

46-2,126 Priority date.

Any water appropriation transferred to a tract of land under sections 46-2,122 to 46-2,125 shall retain the original priority date for the water appropriation.

Source: Laws 1995, LB 99, § 7.

46-2,127 District or company; transfer of appropriation for agricultural purposes; when.

After obtaining approval of an application for transfer and map pursuant to sections 46-2,122 to 46-2,126, the board of directors of any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may transfer an appropriation of water distributed for agricultural purposes from a tract or tracts of land within the district or served by the company to another tract or tracts of land within the boundaries of the district or served by the company if:

(1) The district or company finds that the transferring tract of land has received and had water, delivered by the district or company pursuant to a valid appropriation, beneficially applied in at least one of the preceding five consecutive years or that there has been sufficient cause for nonuse in the same manner as provided in section 46-229.04;

(2) The owner of the land to which the water appropriation is attached consents in writing to the transfer of the appropriation from his or her tract of land;

(3) The water appropriation, or portion thereof, proposed to be transferred has not been transferred by the board of directors of the district or company in the previous four years;

(4) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience

may indicate is necessary, in the exercise of good husbandry, for the production of crops; and

(5) After the transfer, the aggregate water use within the district or company will not exceed the aggregate water appropriation held by the district or company for the benefit of owners of land to which the water appropriations are attached.

Source: Laws 1995, LB 99, § 8; Laws 2004, LB 962, § 30.

46-2,128 District or company; transfer of appropriation for agricultural purposes; published notice; contents.

Commencing at least six weeks but not more than twelve weeks before transferring any water appropriations under section 46-2,127, the district or company shall cause notice of the proposed transfer to be published at least once a week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be applied. The district or company shall also provide the notice to the department. The notice shall contain:

- (1) A description of the water appropriation to be transferred;
- (2) The number assigned the water appropriation permit in the records of the department under sections 46-233 to 46-235;
- (3) The priority date of the water appropriation;
- (4) A description of the land to which the water appropriation is proposed to be applied;
- (5) A statement that any owner of land within the district or served by the canal company may object to and request a hearing on the proposed transfer within seven calendar days after final publication; and
- (6) Any other relevant information.

Source: Laws 1995, LB 99, § 9; Laws 2000, LB 900, § 158.

46-2,129 District or company; transfer of appropriation for agricultural purposes; hearing; notice; powers and duties; priority date.

(1) The board of directors of the district or company, or the board's designee, may hold a hearing on a proposed transfer under section 46-2,127 and shall hold a hearing if requested by any owner of land within the district or served by the canal company. Notice of a hearing under this subsection shall be published at least seven calendar days prior to the hearing in at least one newspaper of general circulation in each county containing lands upon which the water appropriation is or is proposed to be applied. If the hearing is held by the board's designee, the board's designee shall make a written recommendation to the board within fifteen calendar days after the hearing. The board shall act upon the proposed transfer at the board's next regular or special meeting following receipt of the designee's recommendation.

(2) The board of directors may transfer the water appropriation at a regular or special meeting.

(3) Any water appropriation transferred to a tract of land under section 46-2,127 shall retain the original priority date for the water appropriation.

(4) All transfers shall be reported annually to the department pursuant to section 46-261.

Source: Laws 1995, LB 99, § 10.

46-2,130 Sections; how construed.

Nothing in sections 46-2,120 to 46-2,129 shall be construed to limit or restrict the powers of the department with respect to adjudication of water rights.

Source: Laws 1995, LB 99, § 11; Laws 2000, LB 900, § 159.

(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 3

GENERATION OF ELECTRIC LIGHT AND POWER IN CONNECTION WITH WATER APPROPRIATION

Cross References

For jurisdiction of Commission of Industrial Relations, see Chapter 48, article 8.
For provisions relating to public power and irrigation districts, see Chapter 70.

Section

- 46-301. Irrigation districts; establishment of electric light and power systems; powers.
- 46-302. Electric light and power system; construction or acquisition by resolution; procedure.
- 46-303. Electric light and power system; construction or acquisition by petition; procedure.
- 46-304. Electric light and power system; construction or acquisition; examination and report by Department of Natural Resources.
- 46-305. Electric light and power system; construction or acquisition; election required; procedure; vote required; effect of affirmative vote.
- 46-306. General provisions of irrigation law applicable.
- 46-307. Operation of lines beyond district boundaries; powers of district; cost payable out of earnings.
- 46-308. Issuance of debentures pledging earnings; powers of district; judicial confirmation not required.

Section

- 46-309. Proposals in conflict with original project; vote of electors a condition precedent to adoption.
- 46-310. Rates and charges for electric current; rules and regulations of system.
- 46-311. Sale, lease, or transfer; law applicable.
- 46-312. Extension; pledged net proceeds inadequate; bonds; how issued.
- 46-313. Eminent domain; use of highways; construction and operation; general law applicable.
- 46-314. Profits from sale of electricity; how used.
- 46-315. Use of water for hydroelectric plant; rights of irrigation district.

46-301 Irrigation districts; establishment of electric light and power systems; powers.

Irrigation districts organized under the laws of Nebraska are hereby authorized and empowered to make application for and secure and hold appropriations of water for the purpose of generation of electric light and power in connection with any such appropriation of water. Any irrigation district now or hereafter organized under the laws of this state is hereby authorized, subject to the provisions of sections 46-301 to 46-315, to acquire, by purchase, lease or otherwise, construct, extend, improve, manage and operate, electric light and power plants, lines and systems, and all machinery, equipment and other property, real or personal, connected therewith or incident thereto; to manufacture, produce, generate and transmit, distribute, purchase or sell electrical energy for lighting, heating and power purposes; to adopt, use and employ in the generation and production of electrical energy, water power, steam power, and any other practicable means or method; to extend any such plant, lines and systems within and without the boundaries of the irrigation district; and to connect, interconnect and operate such electric light and power plants, lines, systems, and service with those of any other irrigation district or districts or with those of any one or more cities, villages, or public electric light and power districts of this state, or with those of the government of the United States.

Source: Laws 1931, c. 91, § 1, p. 252; C.S.Supp.,1941, § 46-701; R.S. 1943, § 46-301.

46-302 Electric light and power system; construction or acquisition by resolution; procedure.

Whenever the board of directors of any irrigation district shall, by resolution, determine that it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, purchase, construct, or otherwise acquire, operate, and maintain any electric light and power plant, lines, or systems, whether as an addition, extension, enlargement, alteration, or reconstruction of any site, irrigation works, or other property owned or controlled by the district, or as a plant, lines, or system independent of works or property already owned or controlled by the district, the board of directors shall thereupon prepare comprehensive written plans, statements, and reports setting out the nature, location, and description of the proposed plant, lines, and system, including method or methods of generation or acquisition, the location of transmission lines, the use of other sites, properties, and works already owned or controlled by the district, estimated costs of acquisition and construction, the method or means of financing the proposed plan and project, the amount of bonds, if any, proposed to be issued in connection therewith, and such other data as the Department of Natural Resources shall prescribe. The

expense thereof may be authorized by any special meeting or at the annual meeting of such district. Such plans, statements, and reports, including a copy of such resolution, shall be duly certified by the board of directors and shall be thereupon submitted to the department for its examination as set forth in section 46-304.

Source: Laws 1931, c. 91, § 2, p. 253; C.S.Supp.,1941, § 46-702; R.S. 1943, § 46-302; Laws 2000, LB 900, § 160.

46-303 Electric light and power system; construction or acquisition by petition; procedure.

In lieu of the resolution of the board of directors and the preparation and submission by the board of plans, reports, and statements as provided in section 46-302, a petition containing and setting forth the data and information required in such section concerning the proposed electric light and power plant, lines, and systems may be presented to the Department of Natural Resources, signed by not less than twenty percent of all the qualified electors of the district. Such petition shall declare that, in the opinion of the petitioners, it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, adopt substantially the plan or method set out in the petition for the establishment, acquisition, and operation by the district of electric light and power plant, lines, and systems. The petition shall contain the affidavit of the person or persons who circulated the same, certifying that each name signed thereto is the true signature of the person whose name it purports to be and that the person is a qualified elector of the district.

Source: Laws 1931, c. 91, § 3, p. 254; C.S.Supp.,1941, § 46-703; R.S. 1943, § 46-303; Laws 2000, LB 900, § 161.

46-304 Electric light and power system; construction or acquisition; examination and report by Department of Natural Resources.

Upon receipt by the Department of Natural Resources of the plans, reports, and statements provided for in section 46-302 or of the petition provided for in section 46-303, the department shall examine the proposed plan and project, make an estimate of the probable cost thereof, and make such further examination and investigation concerning the same as the department shall deem necessary or advisable. If the department deems the proposed plan and project feasible and practicable, either as originally submitted or as changed and amended by the department, the department shall then file with the board of directors of the irrigation district concerned its report in the matter, which report shall include a complete explanation of the proposed project, the plans and maps showing location of the project, the estimated cost of the project, and the probable receipts from the sale of electric energy, and the certificate of the department that the project has been examined and deemed feasible and practicable by the department.

Source: Laws 1931, c. 91, § 4, p. 254; C.S.Supp.,1941, § 46-704; R.S. 1943, § 46-304; Laws 2000, LB 900, § 162.

46-305 Electric light and power system; construction or acquisition; election required; procedure; vote required; effect of affirmative vote.

Upon the filing of the data and certificates with the board of directors of the district, the board of directors and the other proper officers of the district shall

submit the proposed plan and project to the qualified electors of the district for their approval or rejection, at a general election or at a special election called for that purpose, the submission of proposition and all matters pertaining to such election to conform, including notice of election, as nearly as may be, and except as otherwise expressly provided in sections 46-301 to 46-315, to the provisions of law governing elections upon propositions for the issuance of bonds of the district. The report of the Department of Natural Resources and all other data and information on file with the board of directors or the officers of the district shall be subject to inspection at all reasonable business hours by any elector of the district, or other interested persons, for the entire period during which notice of the election shall be published. Such question and proposition shall be thus submitted by ballots upon which shall appear, in a clear, fair, and concise manner, a statement of the nature and description of the proposed project, and, if such proposition includes the issuance of bonds of the district, there shall also appear upon the ballots a general description of such bonds, including principal amount, rate of interest and when payable, date of issuance, and date of maturity. At the bottom of the ballots substantially the following form shall appear:

FOR the adoption of the foregoing plan and project (and issuance of bonds of the district).

AGAINST the adoption of the foregoing plan and project (and the issuance of bonds of the district).

If a majority of the ballots cast on such proposition are in favor thereof, the board of directors shall declare the same adopted, and the board of directors of the district shall proceed forthwith to put such plan and project into effect, including the issuance of bonds of the district if included in the proposition submitted at the election, the levy and collection of taxes and assessments to pay such bonds and interest thereon, and the execution of all contracts proper or incident to the consummation of such plan and project.

Source: Laws 1931, c. 91, § 5, p. 254; C.S.Supp.,1941, § 46-705; R.S. 1943, § 46-305; Laws 1971, LB 534, § 28; Laws 2000, LB 900, § 163.

Cross References

Issuance of bonds, election, see section 46-194.

46-306 General provisions of irrigation law applicable.

All general provisions of the law of this state pertaining to the acquisition, construction, management, control, and payment of the cost of property and works of irrigation districts, including the levy and collection of taxes and assessments, shall be applicable, as nearly as may be, and except as herein otherwise expressly provided, to any and all electric light and power plants, lines and systems, constructed, purchased or otherwise acquired and operated under the provisions of sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 6, p. 255; C.S.Supp.,1941, § 46-706; R.S. 1943, § 46-306.

46-307 Operation of lines beyond district boundaries; powers of district; cost payable out of earnings.

Any irrigation district in this state which, pursuant to the authority conferred upon it by sections 46-301 to 46-315, shall own or operate, or hereafter acquire or establish any electric light and power plant, distribution system, or transmission lines, may extend and operate the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease or otherwise acquire, and to maintain, improve, extend and operate electric light and power plants, distribution systems, and transmission lines outside the boundaries of such district, for such distance and over such territory within this state as may be deemed expedient. In the exercise of the powers granted by this section any such district by its board of directors may enter into contracts to furnish and sell electrical energy to any person, firm, association, public or private corporation, municipality or public electric light and power district. No such construction, purchase, lease, acquisition, improvement or extension of any such additional plant, distribution system, or transmission lines, however, shall be paid for except out of the net earnings and profits of one or more or all of the electric light and power plants, distribution systems, and transmission lines of such district. The provisions of this section shall be deemed cumulative and the authority herein granted shall not be limited or made inoperative by any other provision of law for the extension and financing of such plants, lines or systems.

Source: Laws 1931, c. 91, § 7, p. 256; C.S.Supp.,1941, § 46-707; R.S. 1943, § 46-307.

46-308 Issuance of debentures pledging earnings; powers of district; judicial confirmation not required.

In lieu of the issuance of bonds or the levy of taxes or assessments as otherwise by law provided, and in lieu of any other lawful methods or means of providing for the payment of indebtedness, any irrigation district within this state shall have the power and authority, by and through its board of directors, to provide for or to secure the payment of the cost or expense of purchasing, constructing or otherwise acquiring, extending and improving any real or personal property necessary or useful in its operation of any electric light and power plant, distribution system, or transmission lines, by pledging, assigning, or otherwise hypothecating the net earnings or profits of such irrigation district derived, or to be derived, from the operation of such electric light and power plant, distribution system, or transmission lines, and to that end, to enter into such contracts and to issue such warrants or debentures as may be proper to carry out the provisions of this section. All earnings, profits, and revenue thus pledged, assigned or hypothecated shall be kept in separate funds to be expended for the specific purposes aforesaid, until such indebtedness shall have been fully paid. Warrants or debentures issued under the provisions of this section shall not be subject to the provisions of law requiring the judicial examination of the issuance and sale of bonds of the district.

Source: Laws 1931, c. 91, § 8, p. 256; C.S.Supp.,1941, § 46-708; R.S. 1943, § 46-308.

46-309 Proposals in conflict with original project; vote of electors a condition precedent to adoption.

No power conferred upon the district under the provisions of sections 46-301 to 46-315 shall be exercised if in express conflict with the original plan or

project submitted to the vote of the electors of the district under the provisions of sections 46-302 to 46-305, unless and until approved by the affirmative vote of a majority of the qualified electors of the district at any general election or at a special election called for the purpose. At such election the notice of the election, conduct of the election and canvass of votes shall so far as practicable conform to the foregoing provisions for elections held for the purpose of the initial establishment or acquisition, by the district, of electric light and power plant, lines or systems.

Source: Laws 1931, c. 91, § 9, p. 257; C.S.Supp.,1941, § 46-709; R.S. 1943, § 46-309; Laws 1971, LB 534, § 29.

46-310 Rates and charges for electric current; rules and regulations of system.

Any irrigation district which shall acquire, establish and operate any electric light and power plant, lines or systems under the provisions of sections 46-301 to 46-315 shall have the power to fix and collect reasonable rates, fees, and charges for electric current, service, equipment, and physical connection sold or furnished to consumers, and to make and enforce reasonable rules and regulations for the operation and conduct of the entire electric light and power system of the district.

Source: Laws 1931, c. 91, § 10, p. 257; C.S.Supp.,1941, § 46-710; R.S. 1943, § 46-310.

46-311 Sale, lease, or transfer; law applicable.

All provisions of law pertaining to any sale, lease or transfer of any electric light and power plant, distribution system or transmission lines by cities, villages, and public electric light and power districts to any private person, firm, association or corporation, shall be applicable, as nearly as may be, to irrigation districts which shall acquire, establish or own any such plant, lines or system.

Source: Laws 1931, c. 91, § 11, p. 258; C.S.Supp.,1941, § 46-711; R.S. 1943, § 46-311.

46-312 Extension; pledged net proceeds inadequate; bonds; how issued.

If at any time after the initial acquisition or establishment by any irrigation district of an electric light and power plant, lines, or systems the Department of Natural Resources deems it to be practicable and expedient that additional plants, lines, or systems, or extensions or improvements of the existing electric light and power plant, lines, or systems, should be made by the district, and if the cost of such additions and extensions cannot be made or provided for by the application of unused funds derived from the operation of the existing electric light and power plant, lines, or systems or by the pledge or assignment of future net revenue as in sections 46-301 to 46-315, then the board of directors may, and on the petition of not less than twenty-five percent of the qualified electors of the district shall, submit to the electors of the district at any general election or at any special election called for the purpose, the question and proposition of making such improvements, additions, or extensions and the issuance of bonds of the district to pay the cost thereof. A statement of the department with reference to the expediency and feasibility of such proposed extension and addition shall be made by such department to the irrigation district whenever

requested by the board of directors of such district. Such election shall be held and the result thereof determined and declared in conformity with the provisions of law governing elections upon the proposition of the issuance of bonds of the district. Complete plans and a description of the proposed additions, improvements, changes, or extensions shall be prepared and kept on file in the main office of the district or of the board of the district, subject to inspection by any elector or other interested person, at all reasonable business hours during the period of publication of notice of such election. The ballots at such election shall conform, as nearly as practicable, with the requirements of section 46-305.

Source: Laws 1931, c. 91, § 12, p. 258; C.S.Supp.,1941, § 46-712; R.S. 1943, § 46-312; Laws 2000, LB 900, § 164.

46-313 Eminent domain; use of highways; construction and operation; general law applicable.

All general provisions of law applicable to electric light and power corporations and irrigation districts which pertain to the exercise of the power of eminent domain, the use and occupation of public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines shall be applicable, as nearly as may be, to irrigation districts in their exercise of the powers and functions, and in their performance of the duties conferred or imposed upon them under the provisions of sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 13, p. 259; C.S.Supp.,1941, § 46-713; R.S. 1943, § 46-313.

Cross References

For eminent domain procedure, see Chapter 76, article 7.

46-314 Profits from sale of electricity; how used.

All net profits derived from the sale of electrical energy under the provisions of sections 46-301 to 46-315 shall belong to the irrigation district producing it, and may be used by such district to pay its operation and maintenance expense, its bonded indebtedness, if any, or other debts, or for improvements and additions.

Source: Laws 1931, c. 91, § 14, p. 259; C.S.Supp.,1941, § 46-714; R.S. 1943, § 46-314.

46-315 Use of water for hydroelectric plant; rights of irrigation district.

Every irrigation district in this state shall have the exclusive right to make application to the Department of Natural Resources for the use of all water used for irrigation purposes and all return flow and seepage water from irrigated land in its district for the purpose of operating hydroelectric plants under sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 15, p. 259; C.S.Supp.,1941, § 46-715; R.S. 1943, § 46-315; Laws 2000, LB 900, § 165.

ARTICLE 4

DAMMING OF DRAWS, WATERCOURSES, AND CREEKS

Section

- 46-401. Repealed. Laws 1961, c. 284, § 1.
- 46-402. Repealed. Laws 1961, c. 284, § 1.
- 46-403. Repealed. Laws 1961, c. 284, § 1.
- 46-404. Repealed. Laws 1961, c. 284, § 1.
- 46-405. Repealed. Laws 1961, c. 284, § 1.
- 46-406. Repealed. Laws 1961, c. 284, § 1.
- 46-407. Repealed. Laws 1961, c. 284, § 1.

46-401 Repealed. Laws 1961, c. 284, § 1.

46-402 Repealed. Laws 1961, c. 284, § 1.

46-403 Repealed. Laws 1961, c. 284, § 1.

46-404 Repealed. Laws 1961, c. 284, § 1.

46-405 Repealed. Laws 1961, c. 284, § 1.

46-406 Repealed. Laws 1961, c. 284, § 1.

46-407 Repealed. Laws 1961, c. 284, § 1.

ARTICLE 5

RECLAMATION DISTRICTS

Cross References

- Directors**, election provisions, see Chapter 32.
- Drainage districts**, see Chapter 31.
- Flood control**, agreements, see sections 23-320.01, 23-320.06, and 23-320.12.
- Local Government Miscellaneous Expenditure Act**, see section 13-2201.
- Natural resources district**:
 - Merger with, legislative intent, see section 2-3201.
 - Projects, approval by reclamation district board, when, see section 2-3230.01.
- Nebraska Budget Act**, see section 13-501.
- Public water supplier**:
 - Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-638.
 - Underground water storage, see section 46-226.03.
- Quo warranto**, see section 25-21,121.
- Sales and use tax**, exemption, see section 77-2704.15.
- Surface water project sponsor**, Nebraska Ground Water Management and Protection Act, see section 46-706.
- Water appropriations**, see sections 46-2,120 to 46-2,129.

Section

- 46-501. Reclamation districts; declaration of purpose.
- 46-502. Reclamation districts; declaration of policy.
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- 46-505. Person and public corporation, defined.
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- 46-507. Works, defined.
- 46-508. Court, defined.
- 46-509. Property, defined.
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- 46-511. Land or property, defined.
- 46-512. Irrigable or irrigable lands, defined.
- 46-513. Nonirrigable land, defined.
- 46-514. Department, defined.
- 46-515. Department of Natural Resources; jurisdiction; power; authority.
- 46-516. Petition; signers; contents.

RECLAMATION DISTRICTS

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46-524.	Objections; contents; hearing.
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46-527.	Petition; dismissal; appeal and writ of error denied.
46-528.	Decree; district established; appeal.
46-529.	Decree; filing; fees.
46-530.	Directors; appointment; election; take office, when; qualified electors; candidates.
46-531.	Repealed. Laws 1994, LB 76, § 615.
46-532.	Repealed. Laws 1994, LB 76, § 615.
46-533.	Repealed. Laws 1994, LB 76, § 615.
46-534.	Directors; vacancy; filled by board of directors.
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46-538.	Directors; compensation; expenses.
46-539.	Directors; quorum.
46-540.	Officers and employees; compensation; bond; duties.
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46-546.	Water service; petition; notice.
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46-550.	Special assessments; Class D; water service; petition; contract.
46-551.	Water service; petition; order; contents.
46-552.	Water service; petition; notice; hearing; order.
46-553.	Annual assessments; levy; limitations; additional levy.
46-554.	Annual assessments; levy; objections; hearing; order; appeal.
46-555.	Taxes; levy; lien; collection.
46-556.	Taxes; levy; delinquent; sale.
46-557.	Taxes; levy; political subdivisions; exemption.
46-558.	Water; contract; security for payment.
46-559.	District; indebtedness; levy of assessments.
46-560.	Directors; board; powers.
46-561.	District; boundaries; change.
46-562.	District; petition to exclude land; contents; notice; objections; hearing; order; appeal.
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46-567.02.	Revenue bonds; rates; charges; purpose.
46-567.03.	Revenue bonds; registration; effect.
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- 46-567.05. Districts organized; elections held; proceedings of directors; taxes levied; validated.
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46-501 Reclamation districts; declaration of purpose.

It is hereby declared that to provide for the conservation of the water resources of the State of Nebraska and for the greatest beneficial use of water within the state, the organization of reclamation districts and the construction of works as herein defined by such districts are a public use and will: (1) Be essentially for the public benefit and advantage of the people of the State of Nebraska; (2) indirectly benefit all industries of the state; (3) indirectly benefit the State of Nebraska in the increase of its taxable property valuation; (4) directly benefit municipalities by providing adequate supplies of water for domestic use; (5) directly benefit lands to be irrigated from works to be constructed; (6) directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams by replenishing and maintaining subsurface supplies; and (7) promote the comfort, safety and welfare of the people of the State of Nebraska.

Source: Laws 1947, c. 173, § 1(1), p. 523.

This and the succeeding section declare the public policy, use, benefits, and purpose of organization of reclamation districts. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-502 Reclamation districts; declaration of policy.

It is therefor declared to be the policy of the State of Nebraska to (1) control, make use of and apply to beneficial use all available waters of this state to a direct and supplemental use of such waters for domestic, manufacturing, irrigation, power and other beneficial uses, (2) obtain from water of the state the highest benefit for domestic uses and irrigation of lands in Nebraska, (3) cooperate with the United States under the federal reclamation laws now or

hereinafter enacted and other agencies of the United States Government in the construction and financing of works in the State of Nebraska as herein defined and for the operation and maintenance thereof, and (4) promote the greater prosperity and general welfare of the people of the State of Nebraska by encouraging the organization of reclamation districts as provided in sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 1(2), p. 524.

46-503 Act, how cited.

Sections 46-501 to 46-573 may be known and cited as Reclamation Act, the districts created hereunder may be termed reclamation districts; and the bonds which may be issued hereunder may be called reclamation district bonds, which designation may be engraved or printed on their face.

Source: Laws 1947, c. 173, § 2(1), p. 524.

This and the eleven succeeding sections contain definition of terms used in Reclamation Act. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-504 Publication, defined.

Wherever the term publication is used in sections 46-501 to 46-573 and no manner specified therefor, it shall be taken to mean once a week three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days (excluding the day of the first publication), shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Source: Laws 1947, c. 173, § 2(2), p. 524.

46-505 Person and public corporation, defined.

Wherever the term person is used in sections 46-501 to 46-573 and not otherwise specified, it shall be taken to mean a person, firm, partnership, limited liability company, association, or corporation other than a county, village, city, city and county, or other political subdivision. Similarly, the words public corporation shall be taken to mean counties, cities and counties, villages, cities, school districts, irrigation districts, water districts, park districts, public power districts, public power and irrigation districts, and all governmental agencies clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

Source: Laws 1947, c. 173, § 2(3), p. 525; Laws 1993, LB 121, § 278.

46-506 Board, defined.

Wherever the word board is used in sections 46-501 to 46-573, and not otherwise specified, it shall be taken to mean the board of directors of the district organized under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(4), p. 525.

46-507 Works, defined.

Wherever the term works is used in sections 46-501 to 46-573, it shall, unless otherwise specified, be held to mean dams, storage reservoirs, compensatory

and replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, transmission lines, drainage canals, pumping plants, and all works, facilities, improvements and property necessary or convenient for the supplying, controlling and disposing of water for domestic, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses.

Source: Laws 1947, c. 173, § 2(5), p. 525; Laws 1951, c. 151, § 1, p. 599.

46-508 Court, defined.

Wherever the term court is used in sections 46-501 to 46-573, and not otherwise specified, it shall be taken to mean the district court sitting in any judicial district of the State of Nebraska, containing a portion or portions of lands contained in a reclamation district.

Source: Laws 1947, c. 173, § 2(6), p. 525.

46-509 Property, defined.

Wherever the term property is used in sections 46-501 to 46-573, it shall, unless otherwise specified, be held to mean real estate and personal property.

Source: Laws 1947, c. 173, § 2(7), p. 525.

46-510 Land or real estate, defined.

Wherever the terms land or real estate are used in sections 46-501 to 46-573, they shall, unless otherwise specified, be held to mean real estate, as the words real estate are defined by the laws of the State of Nebraska, and shall embrace all railroads, highways, electrical roads, street and interurban railroads, roads, streets, street improvements, telephone, telegraph, and transmission lines, gas, sewer and water systems, water rights, pipelines and rights-of-way of public service corporations and all other real property whether held for public or private use.

Source: Laws 1947, c. 173, § 2(8), p. 525.

46-511 Land or property, defined.

Wherever the terms land or property are used in sections 46-501 to 46-573 with reference to benefits, appraisals, assessments, or taxes, public corporations shall as political entities, according to benefits received, be considered as included in such reference in the same manner as land or property.

Source: Laws 1947, c. 173, § 2(9), p. 526.

46-512 Irrigable or irrigable lands, defined.

Wherever the terms irrigable or irrigable lands are used in sections 46-501 to 46-573 they shall be taken to mean privately owned agricultural lands outside the corporate limits of cities or villages, which can be benefited by the use of water for irrigation purposes and which would lie within any district established under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(10), p. 526.

46-513 Nonirrigable land, defined.

Wherever the term nonirrigable land is used in sections 46-501 to 46-573 it shall be taken to mean privately owned agricultural lands outside the corporate

limits of cities or villages, which cannot be benefited by the use of water for irrigation purposes, and which would lie within any district established under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(11), p. 526.

46-514 Department, defined.

For purposes of the Reclamation Act, department means the Department of Natural Resources.

Source: Laws 1947, c. 173, § 2(12), p. 526; Laws 2000, LB 900, § 166.

46-515 Department of Natural Resources; jurisdiction; power; authority.

The department is hereby vested with jurisdiction, power and authority, when conditions stated in section 46-516 are found to exist, to establish reclamation districts for conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing and other beneficial uses as herein provided.

Source: Laws 1947, c. 173, § 3, p. 526.

This and succeeding fourteen sections provide generally for the organization and establishment of reclamation districts as political corporate quasi-municipal subdivisions of the state. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-516 Petition; signers; contents.

Before any reclamation district is established under the Reclamation Act, a petition shall be filed in the office of the department signed by the owners of not less than thirty percent of the acreage of lands to be included in the district, exclusive of land in cities and villages, and each tract or tracts of land and the total acreage shall be listed opposite the name of the signer. A signing petitioner shall not be permitted after the filing of the petition to withdraw his or her name therefrom. No district shall be formed under the act unless the taxable valuation of land, together with improvements thereon, within the proposed district, exclusive of land and improvements thereon in cities and villages, is five million seven hundred twenty thousand dollars or more. The petition shall set forth:

- (1) The proposed name of the district;
- (2) That property within the proposed district will be benefited by the accomplishment of the purposes enumerated in section 46-515;
- (3) A general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district. The description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether the property is within the territory proposed to be organized as a district. The territory need not be contiguous if it is so situated that the organization of a single district of the territory described is calculated to promote one or more of the purposes enumerated in section 46-515;
- (4) The taxable value of all irrigable land within the boundaries of the proposed district;
- (5) A general description of the divisions of the district, the number of directors of the district proposed for each subdivision, and the names and addresses of the proposed members of the board of directors of the district.

There shall be not less than five nor more than twenty-one directors named therein who shall serve until their successors are elected and qualified. In the petition the directors named shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors have been elected at the first general state election thereafter and have qualified, the members of the second group to hold office until their successors have been elected at the second general state election thereafter and have qualified, and the members of the third group until the members elected at the third general state election thereafter have qualified. After the name of each director, it shall be stated to which of the three groups he or she belongs; and

(6) A prayer for the organization of the district by the name proposed.

No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the department may at any time permit the petition to be amended to conform to the facts, to correct any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the department the same as though filed with the first petition placed on file. In determining whether the requisite number of landowners have signed the petition, the department shall be governed by the names as they appear upon the tax roll which shall be prima facie evidence of such ownership.

Source: Laws 1947, c. 173, § 4, p. 527; Laws 1979, LB 187, § 171; Laws 1992, LB 719A, § 151; Laws 2000, LB 900, § 167.

46-517 Petition; bond; requirements.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed in the amount of two thousand dollars, with security approved by the department to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the department shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed at not less than ten days distant. Upon a failure of the petitioner to execute the same, the petition shall be dismissed.

Source: Laws 1947, c. 173, § 5, p. 528.

46-518 Petition; notice of hearing.

Immediately after the filing of such petition, the department shall (1) by order fix a place and time, not less than ninety days nor more than one hundred and twenty days after the petition is filed, for hearing thereon, (2) cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon, and (3) forthwith cause a copy of said notice to be mailed by either registered or certified mail to the county boards of each of the several counties having territory within the proposed district.

Source: Laws 1947, c. 173, § 6, p. 529; Laws 1957, c. 242, § 40, p. 853.

46-519 Protest petition; contents.

At any time after the filing of a petition for the organization of a reclamation district and not less than thirty days prior to the time fixed by the order of the department for the hearing upon said petition, and not thereafter, a petition may be filed in the office of the department wherein the proceeding for the creation of said district is pending, signed by not fewer than the owners of thirty percent of the acreage of lands in the district, exclusive of land in cities and villages, who have not signed the petition for creating the district, protesting the creation of the district. The protesting petition shall list each tract or tracts of land and the total acreage of each signer opposite his name.

Source: Laws 1947, c. 173, § 7(1), p. 529.

46-520 Protest petition; disqualification of signer.

Any person who signs a petition for creation of a district as the owner of any land shall be disqualified to sign a protest petition.

Source: Laws 1947, c. 173, § 7(2), p. 529.

46-521 Protest petition; when dismissed.

Upon the day set for the hearing upon the original petition, if it shall appear to the department from such evidence as may be adduced by any party in interest, that said protesting petition is not signed by the requisite number of owners of lands, the department shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in section 46-525.

Source: Laws 1947, c. 173, § 7(3), p. 529.

46-522 Protest petition; requisite number of signers; dismissal of original petition.

If the department shall find from the evidence that said protesting petition is signed by the requisite number of owners of lands, the department shall forthwith dismiss the original petition praying for the creation of the district. The finding of the department upon said question of the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

Source: Laws 1947, c. 173, § 7(4), p. 530.

46-523 Organization; objections.

Any owner of real property in said proposed district who did not individually sign a petition for the organization of a reclamation district and who desires to object to the organization and incorporation of said district may, on or before the date set for the cause to be heard, file objection to the organization and incorporation of the district.

Source: Laws 1947, c. 173, § 7(5), p. 530.

46-524 Objections; contents; hearing.

Such objection shall be limited to a denial of the statements in the petition. It shall be heard by the department without unnecessary delay.

Source: Laws 1947, c. 173, § 7(6), p. 530.

46-525 Hearing; decree; district established.

Upon the said hearing, if it shall appear that a petition for the organization of a reclamation district has been signed and presented, as provided in section 46-516, in conformity with sections 46-501 to 46-573, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in section 46-521, the department shall, by order duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which it shall thereafter be known in all proceedings. Thereupon the district shall be a political subdivision of the State of Nebraska and a body corporate with all the powers of a public or municipal corporation.

Source: Laws 1947, c. 173, § 7(7), p. 530.

46-526 Decree; contents; office of the district.

In such decree the department shall designate the place, prayed for in the petition, where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district. It may be changed by order of the department from time to time, upon the application of the board of directors of said district. The regular meetings of the board shall be held at such office or place of business, but for cause may be adjourned to any convenient place. The official records and files of the district shall be kept at the office so established.

Source: Laws 1947, c. 173, § 7(8), p. 530.

46-527 Petition; dismissal; appeal and writ of error denied.

If the department finds that no petition has been signed and presented in conformity with sections 46-501 to 46-573, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceeding. Nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar reclamation district, and the right to so renew such proceeding is hereby expressly granted and authorized.

Source: Laws 1947, c. 173, § 7(9), p. 531.

46-528 Decree; district established; appeal.

If an order is entered establishing the district, such order shall be deemed final. Any person, firm, or corporation owning real property within any reclamation district, created or established by virtue of the Reclamation Act, feeling himself or herself aggrieved by the establishment of such district, the determination of its boundaries, or the enclosure therein of any of his or her property may appeal the final order of the department adjudging such district to be duly incorporated. The appeal shall be in accordance with the Administrative Procedure Act, except that the appeal shall be to the district court of the county wherein the principal office of the reclamation district is located. If no appeal is taken within the time prescribed in the Administrative Procedure Act, the entry of such final order by the department shall finally and conclusively establish the regular organization of the district against all persons, except the State of Nebraska in an action in the nature of a writ of quo warranto commenced by the Attorney General within three months after the decree declaring such

district organized as herein provided and not otherwise. The organization of such districts shall not be directly or collaterally questioned in any suit, action, or proceeding, except as herein expressly authorized.

Source: Laws 1947, c. 173, § 7(10), p. 531; Laws 1988, LB 352, § 77.

Cross References

Administrative Procedure Act, see section 84-920.

46-529 Decree; filing; fees.

Within thirty days after the said district has been declared a corporation by the department, such department shall transmit to the Secretary of State and to the county clerk in each of the counties having lands in said district copies of the findings and the decree of the department incorporating said district. The same shall be filed in the office of the Secretary of State, in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations, and also be filed in the office of the county clerk of each county in which a part of the district is located where they shall become permanent records. The clerk in each county shall receive a fee of one dollar for filing and preserving the same. The Secretary of State shall receive for filing said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

Source: Laws 1947, c. 173, § 8, p. 531.

46-530 Directors; appointment; election; take office, when; qualified electors; candidates.

Within thirty days after entering the final order establishing the district, the department shall enter an order appointing the board of directors named in the petition in accordance with subsection (5) of section 46-516. After the selection of the original board of directors of a district as provided for in subsection (5) of section 46-516, their successors shall be elected as provided in section 32-516. Elections shall be conducted as provided in the Election Act and shall take office on the first Thursday after the first Tuesday in January next succeeding their election. Qualified electors of the municipality or municipalities within the territory which composes the territory of a district shall be qualified electors of such district. A qualified elector of a subdivision may only cast his or her ballot for a director to be elected from such subdivision.

Source: Laws 1947, c.173, § 9(1), p. 532; Laws 1975, LB 453, § 55; Laws 1994, LB 76, § 556; Laws 1995, LB 99, § 18.

Cross References

Election Act, see section 32-101.

This and succeeding eleven sections provide for election of the board of directors. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-531 Repealed. Laws 1994, LB 76, § 615.

46-532 Repealed. Laws 1994, LB 76, § 615.

46-533 Repealed. Laws 1994, LB 76, § 615.

46-534 Directors; vacancy; filled by board of directors.

In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of (1) removal from any district of a director,

(2) removal of a director from a subdivision in which he or she was a director, or (3) elimination or detachment from a district of the part thereof where a director or directors reside. In the event of a vacancy, such vacancy shall be filled by the board of directors. Such appointments shall be in writing and continue for the unexpired term and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

Source: Laws 1947, c. 173, § 9(5), p. 533; Laws 1957, c. 124, § 20, p. 431; Laws 1994, LB 76, § 557.

46-535 Directors; bond required.

Each director shall furnish a corporate surety bond at the expense of the district in the sum of ten thousand dollars to be approved by the Secretary of State and filed in his office, conditioned for the faithful performance of his duties as such director.

Source: Laws 1947, c. 173, § 9(6), p. 533.

46-536 Directors; oath.

Each director before entering upon his official duties shall take and subscribe to an oath before an officer authorized to administer oaths, that he will support the Constitutions of the United States and the State of Nebraska, will honestly, faithfully and impartially perform the duties of his office and will not be interested directly or indirectly in any contract let by said district. The oath shall be filed in the office of the department in the original case.

Source: Laws 1947, c. 173, § 10(1), p. 534.

46-537 Directors; chairman; secretary; seal; records.

Upon taking the oath, the members of the board shall choose one of their number chairman of the board and president of the district and elect some suitable person secretary of the board and of the district, who may or may not be a member of the board. Such board shall adopt a seal and keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to the inspection of all owners of property in the district, as well as to all other interested parties.

Source: Laws 1947, c. 173, § 10(2), p. 534.

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.

Cross References

Additional expenses, board may reimburse, Local Government Miscellaneous Expenditure Act, see section 13-2203.

46-539 Directors; quorum.

A majority of the directors shall constitute a quorum and concurrence of a majority of those in attendance, in any matter within their duties, shall be sufficient for its determination except as otherwise herein provided.

Source: Laws 1947, c. 173, § 11, p. 534.

46-540 Officers and employees; compensation; bond; duties.

The secretary shall (1) be custodian of the records of the district and of its corporate seal, (2) assist the board in such particulars as it may direct in the performance of its duties, (3) attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by sections 46-501 to 46-573, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity, and (4) also serve as treasurer of the district unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer, an attorney, and such other agents and assistants as may be necessary and provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost or maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements. He shall make a full report to the board each year, or more often if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer, and such other agents or employees of the district as the board may direct, shall furnish corporate surety bonds, at the expense of the district, in such amount and form as may be fixed and approved by the board conditioned for the faithful performance of their respective duties.

Source: Laws 1947, c. 173, § 12, p. 534.

Cross References

Additional expenses, board may reimburse, Local Government Miscellaneous Expenditure Act, see section 13-2203.

46-541 Directors; general powers and duties; continuance of corporate existence; election; dissolution.

The board shall have power on behalf of the district:

(1) To have perpetual succession, except that all districts organized prior to January 1, 1950, which have not entered into a bona fide construction of their works shall, within fifteen years following January 1, 1961, cause to be submitted to the qualified electors of the district the following question:

Shall the district be continued for an additional fifteen years?

.... Yes

.... No

The election shall be held in the same manner set out in section 46-564 relating to submission to qualified electors for the approval of bonded indebtedness.

In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years. For all districts organized after January 1, 1950, and not having entered into a bona fide construction of their works before January 1, 1961, the directors shall, within fifteen years following January 1, 1961, cause to be submitted the same question to the qualified electors of the district. All districts organized after November 1, 1953, which have not entered into a bona fide construction of

their works within fifteen years after the first day of July of the year of assessment of the taxable property of the district shall submit to the qualified electors of the district the question of whether the district shall be continued for an additional fifteen years. If a district has pending before the Congress of the United States a bill for the authorization or reauthorization of its project at the expiration of any one of such fifteen-year periods, the district shall be continued until such authorization or reauthorization is granted by the Congress of the United States and appropriations made for the actual construction of its work, which additional period shall not exceed ten years from the expiration of the fifteen-year period.

If at the end of the fifteen-year period, plus the additional ten-year period granted while its project is pending before the Congress of the United States for authorization or reauthorization and an appropriation for the actual construction of its works, no physical construction of any of its works has been started, then the same question shall again be submitted to the qualified electors. In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years.

In the event of a failure to receive a majority affirmative vote of the voters voting in such election, the district shall be dissolved and the district shall submit to the department a full and complete audit by a public accountant showing the assets possessed by the district. Thereupon the department shall enter an order providing that within sixty days the assets of such district shall be liquidated, all rights granted by the department shall be canceled, and any assets on hand shall be divided as follows:

(a) All bills payable and all expenses of dissolution shall be deducted from the assets and paid; and

(b) The balance remaining shall be divided proportionately among the operating public school districts of the district in the proportion that the number of acres in each school district bears to the total number of acres of all of the school districts within the boundaries of the district. If the district is confined to one county, distribution shall be made by the county treasurer of such county. If the district extends into more than one county, the funds for disbursement to such school districts shall be paid to the county within which the schoolhouses are located for distribution to such school districts;

(2) To take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water rights and waterworks, and any and all real and personal property of any kind within or without the district necessary or convenient to the full exercise of its powers; to purchase, sell, lease, encumber, alienate, or otherwise dispose of waterworks and real and personal property; to enter into contracts for furnishing water service for use within the district; to acquire, construct, operate, control, and use any and all works, facilities, and means necessary or convenient to the exercise of its power, both within and without the district, for the purpose of providing for the use of such water within the district; and to do and perform any and all things necessary or convenient to the full exercise of the powers granted in this subdivision;

(3) To have and to exercise the power of eminent domain in addition to any other rights and powers conferred in this section upon any district organized under the Reclamation Act, for the purposes and after the manner provided for in sections 76-704 to 76-724, except that when any reclamation district exercises the power of eminent domain as to water being used for power purposes, it

shall not include any other properties of any irrigation district, public power district, or public power and irrigation district organized and existing under the laws of the State of Nebraska;

(4) To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands, which public lands are now or may hereafter become the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees or file any bonds. The district may be required to pay reasonable inspection fees;

(5) To contract with the government of the United States or any agency thereof for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, power plants, drains, and all necessary works incident thereto, to acquire rights to the use of water from such works, and to enter into contracts for the use of water from such works by persons and corporations, public and private;

(6) To list in separate ownership the lands within the district which are susceptible of irrigation from the district sources, to enter into contracts to furnish water service to all such lands, and to levy assessments as hereinafter provided against the lands within the district to which water service is furnished on the basis of the value per acre-foot of water service furnished to the lands within the district. The board may divide the district into units and fix a different value per acre-foot of water in the respective units and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water service furnished to lands within such unit;

(7) To fix rates at which water service, not otherwise provided for in this section, may be furnished. Rates shall be equitable although not necessarily equal or uniform for like classes of service throughout the district;

(8) To adopt plans and specifications for the works for which the district was organized, which plans and specifications may at any time be changed or modified by the board. The plans shall include maps, profiles, and such other data and descriptions as may be necessary to set forth the location and character of the works, and a copy thereof shall be kept in the office of the district and open to public inspection. The plans and specifications and any changes shall be approved by the department in accordance with the statutes;

(9) To appropriate and otherwise acquire water rights within or without the state; to develop, store, and transport water; to provide, contract for, and furnish water service for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical use, and any and all other beneficial uses and to derive revenue and benefits therefrom; to fix the terms and rates therefor; to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, transmission lines, and any and all works, facilities, improve-

ments, and property necessary or convenient therefor; and in the doing of all of such things to obligate itself and execute and perform such obligations according to the tenor thereof. The contracts for furnishing of water service for irrigation and domestic purposes shall only be made for use within the district. The board may transfer water appropriations within the district pursuant to sections 46-2,127 to 46-2,129;

(10) To invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate necessities of the district, in its own bonds or in treasury notes or bonds of the United States. The investment may be made by direct purchase of any issue of such bonds or treasury notes, or part thereof, at the original sale of the same or by the subsequent purchase of such bonds or treasury notes. Any bonds or treasury notes thus purchased and held may, from time to time, be sold and the proceeds reinvested in bonds or treasury notes as provided in this subdivision. Sales of any bonds or treasury notes thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which the bonds or treasury notes were originally purchased was placed in the treasury of the district. The functions and duties authorized by this subdivision shall be performed under such rules and regulations as shall be prescribed by the board;

(11) To refund bonded indebtedness incurred by the district under and pursuant to such rules and regulations as shall be prescribed by the board;

(12) To borrow money, incur indebtedness, and issue bonds or other evidence of such indebtedness;

(13) To adopt bylaws not in conflict with the Constitution of Nebraska and laws of the state for carrying on the business, objects, and affairs of the board and of the district; and

(14) To enter into agreements for water service with agencies of the federal government or the Game and Parks Commission through which water will be made available, at rates determined as provided in subdivision (7) of this section, for hunting, fishing, and recreational development. The water service shall not exceed the amount of water which may be appropriated for such purposes by order of the department, and such amounts shall be included in the total appropriative right of the district or districts involved.

Source: Laws 1947, c. 173, § 13, p. 535; Laws 1951, c. 101, § 96, p. 489; Laws 1951, c. 151, § 2, p. 599; Laws 1953, c. 159, § 1, p. 497; Laws 1955, c. 184, § 1, p. 519; Laws 1959, c. 220, § 1, p. 768; Laws 1961, c. 229, § 1, p. 677; Laws 1971, LB 193, § 1; Laws 1992, LB 1063, § 37; Laws 1992, Second Spec. Sess., LB 1, § 37; Laws 1995, LB 99, § 19; Laws 2000, LB 900, § 168.

46-542 District; levy and collection of taxes; classification of methods.

In addition to the other means of providing revenue for such districts, the board shall have power and authority to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and indebtedness of the district by any one or more of the methods or combinations thereof, classified as follows:

Class A. To levy and collect taxes upon the taxable value of the taxable property within the district;

Class B. To levy and collect assessments for special benefits accruing to lands within municipalities for which water service is furnished;

Class C. To levy and collect assessments for special benefits accruing to lands within irrigation districts for which water service is furnished; and

Class D. To levy and collect assessments for special benefits accruing to lands for which water service is furnished.

Source: Laws 1947, c. 173, § 14, p. 538; Laws 1992, LB 1063, § 38; Laws 1992, Second Spec. Sess., LB 1, § 38.

This and succeeding seventeen sections provide for fiscal management of a reclamation district, and give the board of directors power to levy and collect taxes and special assessments. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-543 Taxes; levy; Class A; submission to qualified voters of district.

To levy and collect taxes under Class A, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, to supply funds for paying expenses of organization, for surveys and plans, and for paying the cost of constructing, operating, and maintaining the works of the district. The amount shall not exceed three and five-tenths cents on each one hundred dollars prior to the delivery of water from the works and thereafter shall not exceed seven cents on each one hundred dollars of the taxable value of the taxable property within the district, except that in the event of accruing defaults, deficiencies, or defaults and deficiencies, an additional levy may be made as provided in section 46-553.

The board shall, on or before September 30 of each year, certify to the county board of each county within the district or having a portion of its territory within the district the amount so fixed with direction that, at the time and in the manner required by law for levying of taxes for county purposes, such county board shall levy such tax upon the taxable value of the taxable property within the district in addition to such other taxes as may be levied by such county board at the rate required to produce the amount so fixed and determined.

No tax shall be levied and collected under Class A until the proposition of levying taxes has been submitted by a resolution of the board to the qualified electors of the district at an election held for that purpose in the same manner as provided for submission of incurring bonded indebtedness in sections 46-564 to 46-566, and when the proposition has been approved by a majority of the qualified electors of the district voting on the proposition at such election, thereafter the board shall be entitled to certify to the county board the amount of tax to be levied.

Source: Laws 1947, c. 173, § 15(1), p. 539; Laws 1969, c. 145, § 37, p. 695; Laws 1979, LB 187, § 172; Laws 1992, LB 1063, § 39; Laws 1992, Second Spec. Sess., LB 1, § 39; Laws 1993, LB 734, § 40; Laws 1995, LB 452, § 13; Laws 2021, LB644, § 18.
Operative date January 1, 2022.

Cross References

Nebraska Budget Act, see section 13-501.

Class A are general taxes, uniformly levied upon all tangible property within the district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

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

Nebraska Budget Act, see section 13-501.

Board of directors of reclamation district may fix rate of levy upon tangible property where direct benefits are received from recharging of ground water reservoirs. Nebraska Mid-State Rec-

lamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-545 Special assessments; Class B; water service; petition; contracts.

To levy and collect special assessments under Class B as herein provided, the board shall make contracts for water service with each petitioning municipality in the district in the manner hereinafter provided and shall fix and determine the rate or rates per acre-foot and terms at and upon which water service shall be furnished for use by such municipalities; *Provided*, that such rates shall be equitable although not necessarily equal or uniform for like classes of service throughout the district. In the event any city shall desire to obtain water service from the district for domestic or irrigation purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for water service upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of municipality; (2) quantity of water to be supplied; (3) the term of years such service is to be supplied; (4) price per acre-foot to be paid for water service; (5) whether payments are to be in cash or annual installments; and (6) an agreement by the municipality to make payments for such water service together with annual maintenance and operating charges and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 16(1), p. 540; Laws 1951, c. 151, § 3, p. 603.

This and two succeeding sections provide as Class B for assessments for special benefits accruing to property within

petitioning municipalities for water service contractually furnished by the reclamation district. Nebraska Mid-State Recla-

mation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-546 Water service; petition; notice.

The secretary of the board shall cause notice of the filing of such petition to be given and published once each week two successive weeks in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board, at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted.

Source: Laws 1947, c. 173, § 16(2), p. 541.

46-547 Water service; petition; hearing; order.

The board at the time and place mentioned in the notice, or at such time or times to which the hearing of the petition may adjourn, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid why the petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may at its discretion accept or reject the petition. If it deems it is for the best interest of the district that the petition be granted, it shall enter an order granting the petition and from and after such order the municipality shall be deemed to have acquired the water service as set forth in the order. If the petition is granted, the board shall determine the amount of money necessary to be raised by taxation from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for each succeeding year, as provided in the order granting the petition, and prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in the resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the general funds of such municipality. Upon receipt by the county board of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it shall be the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by such county board at the rate so fixed and determined.

Source: Laws 1947, c. 173, § 16(3), p. 541; Laws 1951, c. 151, § 4, p. 604.

46-548 Special assessments; Class C; water service; petition; contract.

To levy and collect special assessments upon lands under Class C as herein provided, the board shall make contracts for water service with each of the petitioning irrigation districts within the district in the manner as hereinafter provided and shall fix and determine the rate or rates per acre-foot and terms at and upon which water service shall be supplied to such irrigation district; *Provided*, that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any irrigation district shall desire to obtain the beneficial water service from the district, the board of such irrigation district shall by resolution authorize and

direct its president and secretary to petition the board for water service, upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of irrigation district; (2) quantity of water to be furnished; (3) the terms of years such service is to be supplied; (4) price per acre-foot to be paid; (5) whether payments are to be made in cash or annual installments; and (6) an agreement by such irrigation district to make payments for such water service, together with annual maintenance and operating charges, and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 17(1), p. 542; Laws 1951, c. 151, § 5, p. 605.

This and succeeding section provide as Class C for assessments for special benefits to land within petitioning irrigation districts for water services contractually furnished by the reclamation district. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-549 Water service; petition; notice; hearing; order; assessment; collection.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in the notice, or at such time or times to which the hearing of the petition may be adjourned, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid why the petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may, at its discretion, accept or reject the petition. If it deems it is for the best interest of the district that the petition shall be granted, it shall enter an order to that effect granting the petition and from and after such order the irrigation district or persons therein shall be deemed to have acquired the water service as set forth in the order. If the petition is granted, the board shall determine the amount of money necessary to be raised by special assessment on lands within such irrigation district and shall certify to the county assessor, or county clerk where he is ex officio county assessor, of the county in which the lands of such irrigation district are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for each succeeding year on each tract of land and such county assessor shall extend the amount of such special assessment, plus the operating and maintenance charges, on the tax roll as a special assessment against the lands upon which the special assessment is made. Such assessment shall be paid and collected in equal annual installments over the period of years such water service is petitioned for as set forth in this section. If subdistrict or subdistricts are organized as herein provided, assessments of special benefits shall be made, spread on the tax rolls and collected in the same manner as herein provided in the case of irrigation districts.

Source: Laws 1947, c. 173, § 17(2), p. 543; Laws 1951, c. 151, § 6, p. 605.

46-550 Special assessments; Class D; water service; petition; contract.

To levy and collect special assessments upon lands under Class D as herein provided, the board shall make contracts for water service with petitioning owners of lands in the district, upon which water can be beneficially used in the manner as hereinafter provided, and shall fix and determine the rate or rates

per acre-foot and the terms at and upon which water service shall be furnished for use on the lands. In the event that any person or private corporation shall elect to purchase, lease, or otherwise obtain water service from the district for irrigation of lands, such person or corporation shall petition for water service upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of applicant; (2) quantity of water to be furnished; (3) the term of years such service is to be supplied; (4) description of lands upon which the water will be used and attached; (5) price per acre-foot to be paid; (6) whether payment will be made in cash or annual installments; and (7) an agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water is furnished and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 18(1), p. 544; Laws 1951, c. 151, § 7, p. 606.

This and two succeeding sections provide as Class D for assessments for special benefits accruing to lands for which water service may be contractually furnished by the reclamation

district to petitioning individual owners of lands for irrigation purposes. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-551 Water service; petition; order; contents.

The board may, in its discretion, accept or reject the said petition. If it deems it for the best interest of the district that said petition be granted, it shall enter an order granting the said petition and from and after such order, the said petitioner shall be deemed to have agreed to the acquiring of water service under the terms set forth in said petition and order. Such order shall provide for payment on the basis of rate per acre-foot of water service contracted for said lands within the district; *Provided*, that the board may divide the district into units and fix a different rate per acre-foot of water in the respective units; *and provided further*, that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district.

Source: Laws 1947, c. 173, § 18(2), p. 544.

46-552 Water service; petition; notice; hearing; order.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times to which the hearing on the petition may be adjourned, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid, why the petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may, at its discretion, accept or reject the petition. If it deems it is for the best interest of the district that the petition shall be granted, it shall enter an order to that effect granting the petition, and from and after such order the petitioner or persons interested therein shall be deemed to have acquired the water service as set forth in the order. If such petition is granted, the board shall cause a certified copy of the order granting the petition to be recorded in the county in which the lands are located and thereafter, the annual installments and annual operating and maintenance charges shall be a perpetual tax lien upon such lands. The board shall certify to the county

assessor, or county clerk acting as ex officio county assessor, of the county within the district in which such lands are located the amount of the annual installments, plus a fair proportionate amount of the estimated operating and maintenance charges apportioned to the lands for the term of years such service is to be supplied, and such county assessor shall extend the amount so certified on the tax roll as a flat special assessment against the lands for which such water is petitioned and allotted.

Source: Laws 1947, c. 173, § 18(3), p. 545; Laws 1951, c. 151, § 8, p. 607.

46-553 Annual assessments; levy; limitations; additional levy.

The board in making the annual assessments and levies as provided in the Reclamation Act shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, the maturing of bonds and interest on all bonds, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the proceeds of such levies and assessments made under the act, together with all revenue of the district, are not sufficient to maintain and operate the works of the district and to punctually pay the annual installments on its contracts, bonds, or contracts and bonds and interest thereon and to pay defaults and deficiencies, then the board shall make such additional levies of taxes, assessments, or taxes and assessments as may be necessary for such purposes and notwithstanding any limitations by contract, order, tax lien, or otherwise. Such taxes and assessments shall be made and continue until the indebtedness of the district is fully paid. The amount of such additional levies of taxes under Class A as provided in section 46-542 shall not in any one year exceed an amount that would be raised by a levy of three and five-tenths cents on each one hundred dollars against the taxable value of such property as fixed for general tax purposes. The levies for defaults and deficiencies shall not at any time be so made as to impose upon Class A as provided in section 46-542 payments in excess of twenty-five percent of the anticipated revenue from all sources to be raised for the specific purpose of payment of existing defaults and deficiencies. In making such additional levies, assessments, or levies and assessments, the board shall take into account all sources of revenue and equitably distribute the burden of such defaults and deficiencies according to the uses and benefits as provided in the act.

Source: Laws 1947, c. 173, § 19, p. 546; Laws 1951, c. 151, § 9, p. 608; Laws 1979, LB 187, § 174; Laws 1992, LB 719A, § 152.

An additional levy of taxes is authorized by this section.
Nebraska Mid-State Reclamation District v. Hall County, 152
Neb. 410, 41 N.W.2d 397 (1950).

46-554 Annual assessments; levy; objections; hearing; order; appeal.

Prior to the first day of July of any year in which assessments are made under the authority of sections 46-544 to 46-553, the board shall appoint a time and place or places where it will meet within the district for the purpose of hearing objections to assessments. Prior notice of such hearing shall be given by publication in two issues, a week apart, in some newspaper of general circulation published in each county in which lands within the district are located or, if there is any county in the district in which there is no newspaper published, in an adjoining county. The notice shall notify the owners of property in the district that in the secretary's office and in the office of the county treasurer of

the county in which the land to be assessed is located may be found and examined a description of the property so assessed, the amount of the assessment thereon fixed by the board, and the time and place or places fixed by the board for the hearing of objections to such assessments. It shall not be necessary for the notice to contain separate descriptions of the lots or tracts of real estate, but it shall be sufficient if the notice contains such descriptions as will inform the owner whether or not his or her real estate is covered by such description and where the amount of the assessment can be found of record.

If, in the opinion of any person whose property is assessed, his or her property has been assessed too high or has been erroneously or illegally assessed, he or she may at any time before the date of such hearing file written objections to such assessments stating the grounds of such objections, which statement shall be verified by the affidavit of the person or his or her agent. At such hearing the board shall hear such evidence and arguments as may be offered concerning the correctness or legality of such assessment and may modify the same.

Any owner of property desiring to appeal from the findings of the board as to assessments shall, within thirty days from the findings of the board, file with the clerk of the district court of the county within which the property or a part thereof is located a written notice making demand for trial by the court. The appellant at the same time shall file a bond with good and sufficient security to be approved by the clerk of the court in a sum not exceeding two hundred dollars to the effect that if the finding of the court is not more favorable to the appellant than the finding of the board, the appellant will pay the cost of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one appeal is taken, the court may, upon a showing that the same may be consolidated without injury to the interests of anyone, consolidate and try the appeals together. The court shall not disturb the findings of the board unless they are manifestly disproportionate to the assessments imposed upon other property in the district created under sections 46-501 to 46-573. The trial shall be to the court, take precedence before the court, and be taken up as promptly as possible after the appeal is taken from the findings of the board within the time prescribed in this section.

If no appeal is taken from the findings of the board, then the assessment shall be final and conclusive evidence that the assessments have been made in proportion to the benefits conferred upon the property in the district by reason of the improvements to be constructed under such sections, and such assessments shall constitute a perpetual lien upon such property so assessed until paid.

Any person, firm, or corporation owning real property within any reclamation district created or established by virtue of such sections and feeling aggrieved by a final order of the district court may appeal to the Court of Appeals. He or she shall give notice of appeal, deposit the docket fee, and file a transcript as provided in section 25-1912. The appeal being one of public interest shall be advanced by the court to a speedy hearing.

Source: Laws 1947, c. 173, § 20, p. 546; Laws 1949, c. 158, § 1, p. 400; Laws 1951, c. 151, § 10, p. 609; Laws 1991, LB 732, § 108.

This section provides that the district board prior to the first day of July shall sit as a board of equalization and assessment. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-555 Taxes; levy; lien; collection.

It shall be the duty of the officer or body having authority to levy taxes within each county, city and county, or village, to levy the taxes and special assessments as provided in sections 46-501 to 46-573 and it shall be the duty of all county, or city and county officials, charged with the duty of collecting taxes, to collect such taxes and special assessments in the time, form and manner and with like interest and penalties as county or city and county taxes are collected and when collected to pay the same to the district ordering its levy or collection. The payment of such collections shall be made through the secretary of the district and paid into the depository thereof to the credit of the district. All taxes and assessments made under sections 46-501 to 46-573 together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall until paid constitute a perpetual lien on a parity with the tax lien of general, state, county, city, village or school taxes and no sale of such property to enforce any general, state, county, city, village or school tax or other liens, shall extinguish the perpetual lien of such taxes and assessments.

Source: Laws 1947, c. 173, § 21, p. 548.

Cross References

Property tax liens, penalties, and interest, see sections 77-203 to 77-209.

46-556 Taxes; levy; delinquent; sale.

If the taxes, assessments, or taxes and assessments, levied are not paid when due as herein provided, then the real property shall be sold at the regular tax sale for the payment of the taxes and assessments, interest, and penalties, in the manner provided by the statutes of the State of Nebraska for selling property for payment of general taxes. If there are no bids at the tax sale for the property so offered under Class A and Class B, the property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, village, and city taxes. If there are no bids for the property so offered under Class C and Class D, the property shall be struck off to the district and the tax certificate shall be issued in the name of the district and the board shall have the same power with reference to sale of the tax certificate, as now is vested in a county board and a county treasurer when property is struck off to the counties.

Source: Laws 1947, c. 173, § 22, p. 549; Laws 1951, c. 151, § 11, p. 611.

46-557 Taxes; levy; political subdivisions; exemption.

All property of whatever kind and nature owned by the state and by villages, cities, school districts, drainage districts, irrigation districts, park districts, water districts, or any other governmental agency or agencies within the said reclamation district, shall be exempt from assessment and levy by the board as provided by sections 46-501 to 46-573 for the purposes herein contained.

Source: Laws 1947, c. 173, § 23, p. 549.

46-558 Water; contract; security for payment.

The board may enter into contracts for water service with persons, mutual ditch companies, water users' associations and other private corporations for irrigation or commercial use as shall be provided by contracts in writing authorized and entered into by the board; and the board shall require that

security be given to secure the payments to be made under such contract or contracts.

Source: Laws 1947, c. 173, § 24, p. 549.

46-559 District; indebtedness; levy of assessments.

Whenever a contract of indebtedness has been created by the district, it shall be lawful for the board to make the levy of taxes and special assessments in such amount as will create a surplus of funds to meet the annual installments of indebtedness or the payment of bonds and interest, and the necessary maintenance and operating charges, and the board shall cause such surplus funds to be placed in a sinking fund which may be used for the payments of contingencies, defaults and delinquencies, and to pay the future annual installments of indebtedness on contract, bonds, or contract and bonds, and interest.

Source: Laws 1947, c. 173, § 25, p. 550; Laws 1951, c. 151, § 12, p. 611.

46-560 Directors; board; powers.

The board shall have the following powers concerning the management, control, delivery, use and distribution of water by the district, to wit:

- (1) To make and enforce all reasonable rules and regulations for the management, control, delivery, use and distribution of water;
- (2) To withhold the delivery of water upon which there are any defaults or delinquencies of payment;
- (3) To provide for and declare forfeitures of contracts for water service upon default or failure to comply with any order, contract or agreement for service;
- (4) To provide for and grant the right, upon terms, to transfer water service from lands to which water service has been furnished to other lands within the district and to discharge liens from lands to which same was theretofore attached and to create liens, as provided in sections 46-501 to 46-573, upon lands to which the use of such water service is transferred.

Source: Laws 1947, c. 173, § 26, p. 550.

This section confers upon the board of directors certain defined powers concerning the management, control, delivery, use, and distribution of water by the reclamation district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-561 District; boundaries; change.

The boundaries of any district organized under the provisions of sections 46-501 to 46-573 may be changed in the manner herein prescribed, but the changes of boundaries of the district shall not impair or affect its organization, its right in or to property, or any of its rights or privileges whatsoever and shall not affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had such change of boundaries not been made. The owners of lands may file with the board a petition, in writing, asking that such lands be included in the district. The petition shall describe the tracts or body of land owned by the petitioners. It shall be deemed to give assent by the petitioners to the inclusion in the district of the lands described in the petition. The petition shall be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of the filing of such petition to be given and published in the county in which the lands are situated, which notice shall state the filing

of such petition, names of petitioners, descriptions of lands mentioned, and the prayer of the petitioners and give notice to all persons interested to appear at the office of the board at the time named in the notice and show cause in writing, if any, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned proceed to hear the petition and all objections presented in writing by any person showing cause why the petition should not be granted. The failure of any person interested to show cause in writing shall be deemed and held and taken as an assent on his or her part to the inclusion of such lands in the district as prayed for in the petition. If the petition is granted, the board shall make an order to that effect.

Source: Laws 1947, c. 173, § 27, p. 550; Laws 1951, c. 151, § 13, p. 612; Laws 1999, LB 103, § 3.

This section provides a procedure by petition, notice, and hearing, for including lands within the district which were not included at the time of organization. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-562 District; petition to exclude land; contents; notice; objections; hearing; order; appeal.

The owner or owners in fee of any lands constituting a portion of the district, which lands are not within the corporate limits of any city or village, may file with the board a petition praying that such lands be excluded and taken from the district. It shall describe the lands which the petitioners desire to have excluded and set out that the lands have not and cannot acquire any benefit from the water resources or other operations of the district. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which the lands, or the major portion thereof, are located. The notice shall state the filing of such petition, the names of petitioners, descriptions of lands mentioned in the petition, and the prayer of the petitioners and notify all persons interested to appear at the office of the board at the time named in the notice, showing cause in writing, if any, why the petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times to which the hearing of the petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing by any person showing cause why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the lands mentioned in the petition or any part thereof. The board, if the allegations of the petition are found to be true, shall order that the lands mentioned in the petition or some portion thereof be excluded from a district and, if the board finds that the allegations are not true, shall order that the petition be denied. In case a contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the Secretary of the Interior assents to the change in writing and such assent is filed with the board. Upon such assent, any lands excluded from the district shall upon order of the board be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents. Appeal may be taken to the district court of the district in which the lands, or the major portion thereof,

are located by filing a transcript of the proceedings thereon in the manner and form as provided by sections 25-1901 to 25-1937.

Source: Laws 1947, c. 173, § 28, p. 551; Laws 1991, LB 1, § 5.

This section provides a procedure by petition, notice, and hearing, for exclusion of lands from the district which have been included. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-563 Construction, operation, and maintenance; contract with federal government for payment; bonds; term; execution; interest; exempt from taxes.

To pay for construction, operation and maintenance of said works and expenses preliminary and incidental thereto, the board is hereby authorized to enter into contract with the United States or any agency thereof, providing for payment in installments or to issue negotiable bonds of the district. If bonds are authorized, the same shall bear interest payable semiannually, and shall be due and payable not less than ten nor more than fifty years from their dates. The form, terms and provisions of said bonds, provisions for their payment and conditions for their retirement and calling, not inconsistent with law, shall be determined by the board and they shall be issued as hereinafter provided in payment of the works, equipment, expenses and interest during the period of construction. Said bonds shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto and attested by the secretary of the board. They shall be in such denominations as the board shall determine and be payable to bearer and may be registered in the office of the county treasurer of the county wherein the organization of the district has been effected, with the interest coupons payable to bearer, which shall bear the facsimile signature of the president of the board. Such bonds shall be exempt from all state, county, municipal, school and other taxes imposed by any taxing authority of the State of Nebraska and shall not be sold at less than par and accrued interest.

Source: Laws 1947, c. 173, § 29, p. 552; Laws 1969, c. 51, § 115, p. 344.

This and succeeding four sections authorize the district to acquire, construct, or maintain sources of water supply or other improvements and to issue bonds. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-564 Bonded indebtedness; submission to qualified electors; election.

Whenever the board incorporated under sections 46-501 to 46-573 shall, by resolution adopted by a majority of the said board, determine that the interests of said district and the public interest or necessity demand the acquisition, construction or completion of any source of water supply, waterworks, or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects or purposes of said district, wherein the indebtedness or obligation shall be created, to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, the board shall order the submission of the proposition of incurring such obligation or bonded or other indebtedness for the purposes set forth in said resolution, to the qualified electors of the district at an election held for that purpose. Any election held for the purpose of submitting any proposition or propositions of incurring such obligation or indebtedness may be held separately, or may be consolidated or held concurrently with any other election authorized by law at which such qualified electors of the district shall be entitled to vote. The declaration of public interest or necessity herein required and the provision for the holding of such election

may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the county board of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held hereunder. In the event any such election shall be called to be held concurrently with any other election or shall be consolidated therewith, the resolution calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom.

Source: Laws 1947, c. 173, § 30, p. 553.

A contract for the purchase of a water supply which created a forty-year obligation on the part of the reclamation district is required, under this section, to be submitted to the voters of the district for approval. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

46-565 Bonded indebtedness; election; notice.

The resolution provided in section 46-564 shall be published once a week two consecutive weeks, the last publication of which shall be at least ten days prior to the date set for said election, in a newspaper of general circulation printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

Source: Laws 1947, c. 173, § 31, p. 555.

46-566 Bonded indebtedness; election; conduct; proclamation.

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five days following the date of such election, the returns thereof shall be canvassed and the results thereof declared. In the event that any election held hereunder shall be consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body or bodies to promptly certify and transmit to the board a statement of the result of the vote upon the proposition submitted hereunder.

Upon receipt of such certificate, it shall be the duty of the board to tabulate and declare the results of the election held hereunder.

Source: Laws 1947, c. 173, § 32, p. 555.

46-567 Bonded indebtedness; bonds; issuance; sale.

In the event that it shall appear from said returns that a majority of said qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, and issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided and at a rate of interest not exceeding the rate of interest recited in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

Source: Laws 1947, c. 173, § 33, p. 555.

46-567.01 Revenue bonds; interest; issuance; sale.

In addition to the authority to issue bonds provided by sections 46-563 to 46-567, the board is hereby authorized to issue revenue bonds for any corporate purpose for the payment of which the board is authorized to pledge only the revenue, income, receipts, and profits derived by the district from the sale of power and energy, water for domestic and irrigation uses, and assessments for special benefits authorized under Classes B, C, and D, and money received for all other services, furnished, sold, or supplied by the district. The district shall not pledge to the payment of bonds authorized under this section any taxes levied as Class A under the authority of section 46-543 or under any sections therein referred to, and no bonds shall be issued under the provisions of this section unless authorized by an election as provided in section 46-564. Such bonds shall bear such rate or rates of interest as shall be determined by the board, and such bonds shall be due and payable in not more than fifty years from the date thereof. The form, terms, and provisions of the bonds for the redemption of the bonds prior to maturity, with or without premiums, not inconsistent with the law, shall be determined by the board. The bonds shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto, attested by the secretary of the board, and they shall be in such denominations as the board shall determine, and payable to bearer, or registered as to principal only, or as to principal and interest, as the board shall determine, and the bonds shall be registered in the office of the county treasurer in the county wherein the main office of the district is located. The coupons attached to the bonds shall be executed with the facsimile signature of the president of the board. The bonds and the interest thereon shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the State of Nebraska.

Source: Laws 1951, c. 151, § 14, p. 613; Laws 1969, c. 385, § 2, p. 1354; Laws 1969, c. 51, § 116, p. 344.

46-567.02 Revenue bonds; rates; charges; purpose.

Whenever revenue bonds have been authorized and issued under the provisions of section 46-567.01, the board is hereby authorized and directed to fix rates and charges for the sale of power and energy, water for domestic and irrigation uses and all other services furnished, sold, or supplied by the district, and Class B, C, and D assessments, which shall be fair and equitable and which shall be sufficient, together with other revenue, taxes, and assessments of the district, to pay the proper operation and maintenance cost of the works of the district, and to provide proper renewals and replacements thereof and extensions thereto, and to pay the principal of and interest on such bonds, as the same become due, including reasonable reserves for all of the purposes, and the board is further authorized to pledge all or any part of the revenue and assessments, except taxes levied as Class A to the payment of such bonds, notes, or other evidences of indebtedness under such terms and conditions as may seem desirable to the board. All provisions contained in any resolution authorizing the issuance of such bonds providing for the establishment of such rates and charges and the levying of such assessments, and for the collection, deposit, and disbursement of the money of the district from whatever source derived, which are designed for the protection, safeguard, and security of such bonds, and the rights of the holders thereof shall constitute a contract between the district and bondholders, and the provisions thereof and the provisions of sections 46-567.01 to 46-567.06 shall be enforceable by any bondholder by mandamus or any other appropriate suit or action in any court of competent jurisdiction against the board and the officers of the district. The district may also covenant with the holders of the bonds from time to time with respect to limitations upon the right to dispose of any of the works of the district without providing for the payment of bonds, and limitations upon the issuance of additional bonds, and concerning the appointment of trustees, depositories, and paying agents to receive, hold, deposit, invest, and reinvest all or any part of the income, revenue, receipts, profits, and assessments derived by the district, pursuant to sections 46-567.01 to 46-567.06.

Source: Laws 1951, c. 151, § 15, p. 614.

46-567.03 Revenue bonds; registration; effect.

All bonds issued pursuant to the provisions of sections 46-567.01 to 46-567.06 and registered by the county treasurer, provided in section 46-567.01, shall bear a certificate evidencing such registration endorsed thereon. It shall be signed by the county treasurer or a deputy and sealed with the seal of his office. All bonds, after having been registered and bearing such certificate, shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the district in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the directors thereof or for the authorization and issuance of such bonds or in the sale, execution, or delivery thereof.

Source: Laws 1951, c. 151, § 16, p. 615.

46-567.04 Revenue bonds; negotiable instruments; authorized investments.

All bonds issued under the authority of sections 46-567.01 to 46-567.06 are hereby declared to be negotiable instruments under the law merchant and are

hereby made securities in which all state and municipal officers and bodies, all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and societies, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital, belonging to them or within their control; and the bonds are hereby made securities which may properly and legally be deposited with and shall be received by any municipal officer or agency for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1951, c. 151, § 17, p. 615.

46-567.05 Districts organized; elections held; proceedings of directors; taxes levied; validated.

All districts heretofore organized under the authority of Chapter 46, article 5, Revised Statutes Supplement, 1949, and all elections and proceedings heretofore held and taken by the boards of directors of the districts, including the levy of taxes pursuant to the provisions hereof, be and the same are hereby ratified, validated and confirmed.

Source: Laws 1951, c. 151, § 18, p. 615.

46-567.06 District; levy of taxes; Class A; issuance of warrants; interest; limitation.

Whenever a district has been authorized to levy Class A taxes, the board may borrow money in anticipation of the collection of such taxes for which a levy has been made to the extent of ninety percent thereof, and may issue negotiable warrants to evidence such loans payable in not more than twelve months from the date thereof, and bearing interest at a rate not to exceed six percent per annum. Such warrants may be issued and sold in such manner as the board may determine.

Source: Laws 1951, c. 151, § 19, p. 616.

46-568 Directors; petition for determination of power; notice; hearing; order; appeal.

The board may at any time file a petition in the court, praying a judicial examination and determination of (1) any power conferred hereby by any amendment hereto, (2) any tax or assessment levied, or (3) any act, proceeding, or contract of the district, whether or not the contract shall have been executed, including proposed contracts for the acquisition, construction, maintenance, or operation of works for the district. Such petition shall set forth the facts on which the validity of such power, assessment, act, proceeding, or contract is founded and shall be verified by the president of the board. Notice of the filing of the petition shall be given by the clerk of the district court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts mentioned in the petition may be examined. The notice shall be served by publication in at least three consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located and by posting the same in

the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition. Any owner of property in the district or person interested in the contract or proposed contract may appear and demur to or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail to appear. The petition and notice shall be sufficient to give the court jurisdiction. Upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, make such findings with reference thereto, and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment and decree of the court may be had as in other similar cases but shall be commenced within thirty days after the entry of the judgment, decree, or final order complained of. The code of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this section. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: Laws 1947, c. 173, § 34, p. 556; Laws 1961, c. 227, § 3, p. 672; Laws 1987, LB 33, § 10; Laws 1996, LB 299, § 24; Laws 1999, LB 43, § 23.

A determination of the feasibility of a water reclamation project and the determination of the adequacy of a supply of water for the project are legislative functions and not within the scope of judicial review authorized by this section. *Twin Loups Reclamation & Irr. District v. Blessing*, 202 Neb. 513, 276 N.W.2d 185 (1979).

This and two succeeding sections do not amend or repeal any provision of the Uniform Declaratory Judgments Act, but are simply part of a general act complete within itself which authorize a special confirmatory proceeding. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-569 Notice; defective; effect.

In any and every case where a notice is provided for in sections 46-501 to 46-573, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: Laws 1947, c. 173, § 35, p. 557.

46-570 Organization; validity; hearing.

All cases in which there may arise a question of the validity of the organization of a reclamation district, or a question of the validity of any proceeding under sections 46-501 to 46-573 shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 36, p. 557.

46-571 Sections, how construed.

Sections 46-501 to 46-573, being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of public and private property, shall be liberally construed to effect the purposes of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 37, p. 557.

This section provides a construction clause. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-572 Sections; severability; validity.

Should the courts of the state or of the United States declare any section, provision, paragraph, clause, sentence, phrase, or part thereof, of sections 46-501 to 46-573 invalid or unconstitutional, or in conflict with any other section, provision, paragraph, clause, sentence, phrase, or part thereof, declared to be unconstitutional or unauthorized, the same shall not affect any other part whatsoever of sections 46-501 to 46-573. The Legislature hereby declares that it would have passed sections 46-501 to 46-573 and each section, provision, paragraph, clause, sentence, or phrase hereof irrespective of the fact that any one or more of the other sections, provisions, paragraphs, clauses, sentences, or phrases, or parts thereof, be declared invalid or unconstitutional.

Source: Laws 1947, c. 173, § 38, p. 557.

This section provides an all-inclusive saving clause. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-573 District; laws applicable.

All power plants and systems and all irrigation works constructed or otherwise acquired or used or operated by any reclamation district under the provisions of sections 46-501 to 46-573 or proposed by such districts to be so constructed, acquired, owned, used or operated, are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law now applicable to electric light and power corporations or to irrigation districts or to privately owned irrigation corporations as regards the power of eminent domain, the use and occupation of state and other public lands and highways, the appropriation or other acquisition or use of water, water power, water rights, or storage rights for any of the purposes contemplated in said sections, the manner or method of construction, physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable as nearly as may be to districts organized under sections 46-501 to 46-573 and in performance of the duties conferred or imposed upon them under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 39, p. 558.

This section provides that all works constructed or acquired shall be works of internal improvement, and authorizes the exercise of the power of eminent domain. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-574 Boundaries; change; no impairment of rights; petition; contents.

The boundaries of any reclamation district now or hereafter organized under Chapter 46, article 5, may be changed and tracts of land included within the boundaries of such district in the manner prescribed by sections 46-574 to 46-584, but the changes of boundaries of the district shall not impair its organization or its rights in or to property or any of its rights or privileges of whatever kind or nature nor shall it impair or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such annexation and change of boundaries not been made. Before any tracts of land can be annexed and included in such district, a

petition shall be filed with the board of directors of the district to which annexation is desired signed by the owners of not less than fifty-one percent of the acreage of lands in the tract or tracts of land to be annexed and included in such district, exclusive of land in cities and villages, and each tract or tracts of land and the total acreage shall be listed opposite the name of the signer. A signing petitioner shall not be permitted after the filing of the petition to withdraw his or her name therefrom. The petition shall set forth:

- (1) The name of the district to which the annexation and inclusion shall be made;
- (2) That property within the boundaries of the area proposed to be annexed to the district will be benefited by the accomplishment of the purposes enumerated in section 46-515;
- (3) A general description of the purpose of the contemplated improvement and of the territory to be included in the tract or tracts of land, which description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether the property is within the territory proposed to be annexed and included in such district;
- (4) The taxable value of all irrigable land within the boundaries of the tract or tracts of land to be annexed and included in such district;
- (5) A general description of the proposed tract or tracts of land and the division or divisions of such district to which the tract or tracts of land will be included; and
- (6) A prayer for the annexation and inclusion of the tract or tracts by the signing petitioner or petitioners.

Source: Laws 1951, c. 147, § 1, p. 589; Laws 1979, LB 187, § 175; Laws 1992, LB 719A, § 153.

46-575 Boundaries; change; petition; bond.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on the petition, a bond shall be filed in the amount of two thousand dollars, with security approved by the board of directors of such district to pay all expenses connected with the proceedings in case the annexation of said area to such district be not effected. If at any time during the proceeding the board of directors shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed at not less than ten days distant. Upon a failure of the petitioner to execute the same, the petition shall be dismissed.

Source: Laws 1951, c. 147, § 2, p. 590.

46-576 Boundaries; change; petition; board of directors; fix time and place of hearing.

Immediately after the filing of the petition as provided in section 46-575, the board of directors of such district shall (1) by order fix a place and time, not less than ninety days nor more than one hundred twenty days after the petition is filed, for hearing thereon, (2) cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon, and (3) forthwith cause a copy of the notice to be mailed by certified or registered mail

to the county boards of each of the several counties having territory within the tract or tracts of land proposed to be annexed.

Source: Laws 1951, c. 147, § 3, p. 591; Laws 1987, LB 93, § 13.

46-577 Boundaries; change; protesting petition; requirements.

At any time after the filing of a petition for the annexation of any tract or tracts of land to an existing reclamation district and not less than thirty days prior to the time fixed by the order of the board of directors of such district for the hearing upon said petition, and not thereafter, a petition may be filed with the board of directors of such district wherein the proceedings for the annexation of any tract or tracts of land to such district is pending, signed by not less than the owners of fifty-one percent of the acreage of lands in the tract or tracts of land to be annexed to such district, exclusive of land in cities and villages, who have not signed the petition for the annexation of a tract or tracts of land to such district, protesting the annexation of such tract or tracts of land to such district. The protesting petition shall list each tract or tracts of land and the total acreage of each signer opposite his name.

Source: Laws 1951, c. 147, § 4, p. 591.

46-578 Boundaries; change; protest petition; disqualification of signer.

Any person who signs a petition for the annexation of any tract or tracts of land to such district as the owner of any land shall be disqualified to sign a protest petition.

Source: Laws 1951, c. 147, § 5, p. 591.

46-579 Boundaries; change; protest petition; when dismissed.

Upon the day set for the hearing upon the original petition for the annexation of any tract or tracts of land to such district, if it shall appear to the board of directors of such district from such evidence as may be adduced by any party in interest, that the protesting petition is not signed by the requisite number of owners of lands, the board of directors of such district shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in section 46-525.

Source: Laws 1951, c. 147, § 6, p. 591.

46-580 Boundaries; change; protest petition; requisite number of signers; dismissal of original petition.

If the board of directors of such district shall find from the evidence that the protesting petition is signed by the requisite number of owners of lands, the board of directors of such district shall forthwith dismiss the original petition praying for the annexation of the tract or tracts of land to be annexed and included in such district. The finding of the board of directors of such district upon said question of the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

Source: Laws 1951, c. 147, § 7, p. 592.

46-581 Boundaries; change; objections.

Any owner of real property in the tract or tracts of land to be annexed to such district who did not individually sign a petition for the annexation of the tract or tracts of land to such district and who desires to object to the annexation of the tract or tracts of land to such district may, on or before the date set for the cause to be heard, file objection to the annexation to and incorporation of the tract or tracts of land to such district.

Source: Laws 1951, c. 147, § 8, p. 592.

46-582 Boundaries; change; objections; hearing.

Such objection shall be heard by the board of directors without unnecessary delay.

Source: Laws 1951, c. 147, § 9, p. 592.

46-583 Boundaries; change; hearing; election; final order; filed with Department of Natural Resources.

At the hearing, if the board of directors of such district deems it not for the best interest of such district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, the board of directors of such district shall order that the petition be rejected. But if the board of directors of such district deems it for the best interest of such district that the boundaries of such district be changed and if it appears that the petition for the annexation and incorporation of the tract or tracts of land has been signed and presented as provided in section 46-574, that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided by sections 46-574 to 46-584, the board of directors of such district may enter a tentative order annexing and including all lands described in the petition, or some part thereof. The order shall not become final until the proposition of levying taxes as provided for in section 46-543 has been complied with and until the proposition of levying taxes has been submitted by a resolution of the board of directors of such district to the qualified electors residing within the tract or tracts of land described in the tentative order at an election held for that purpose in the same manner as provided for submission of incurring bonded indebtedness in sections 46-564 to 46-566, and when the proposition has been approved by a majority of the qualified electors residing within the tract or tracts of land voting on the proposition at such election, then the board of directors shall enter a final order annexing and including all lands described in the tentative order. If at such election a majority of the qualified electors vote against the proposition, then the board of directors of such district shall set aside the tentative order, shall order that the petition be denied, and shall proceed no further in that matter. If the proposition is approved by a majority of the qualified electors of the tract or tracts voting on the proposition at such election in the manner provided for in section 46-543, the board of directors of such district shall certify to the county board of the county in which the tract or tracts of land are situated the rate of tax to be levied. The final order entered by the board of directors of such district shall describe the entire boundaries of the district, and for that purpose the board of directors may cause a survey of such portions thereof to be made as the board of directors deems necessary. A copy of the final order of the board of directors ordering such annexation, certified by the president and secretary of the board of directors of such district, shall be filed with the Department of Natural

Resources, and thereupon the district shall be and remain a reclamation district as fully and to every intent and purpose as if the lands which are included in the district by the annexation thereof and the change of boundaries had been included therein at the original organization of the district. Such tract or tracts of land so annexed to such district shall enjoy all the rights and privileges, of whatever kind and nature, and be subject to all the contract, obligation, lien, or charge for or upon which the original district was or might become liable or chargeable.

Source: Laws 1951, c. 147, § 10, p. 592; Laws 2000, LB 900, § 169.

46-584 Boundaries; change; decree; determination; directors; terms of office.

Upon the entry of the final order as mentioned in section 46-583, and as soon thereafter as is practical, the board of directors of such district may determine the boundaries of each or of all the subdivisions, and make such adjustments and changes in the boundaries of such subdivisions as are necessary; *Provided*, if adjustments and changes of boundaries in each or all of the subdivisions are made, the directors shall be divided as nearly as possible into three equal groups, the members of the first group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the first general election thereafter and shall have qualified, the members of the second group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the second general state election thereafter and shall have qualified, and the members of the third group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the third general state election thereafter and have been qualified. When the terms of the members of the three respective groups expire, their respective successors shall each be elected for a term of six years, and the terms of all elected successors thereafter shall be six years.

Source: Laws 1951, c. 147, § 11, p. 594.

**46-585 Fiscal year, defined; audit; Auditor of Public Accounts; form; pre-
scribe; filing; time.**

The fiscal year of a reclamation district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district, subject to the approval of the Auditor of Public Accounts. The audit shall be in a form prescribed by the auditor, and shall contain and show the items set forth in section 46-586. When the audit has been examined and approved by the auditor, written copies thereof shall be placed and kept on file at the principal place of business of the district, and shall be filed with the Auditor of Public Accounts within one hundred and twenty days after December 31 of each year.

Source: Laws 1965, c. 269, § 1, p. 769.

46-586 Audit; contents.

In each reclamation district in Nebraska, the Auditor of Public Accounts shall cause the books of account kept by the board of directors of such districts to be examined and audited. Such audits shall show (1) the gross income from all

sources of the district for the year previous; (2) the gross amount of electrical energy supplied by said district; (3) the amount expended during the previous year for maintenance; (4) the amount expended during the previous year for plant investments; (5) the amount of depreciation of the plant during the previous year; (6) the cost of supplying electrical energy, including production cost, transmission cost and distribution cost; (7) the number of employees as of December 31 of each year; (8) the salaries and expenses paid employees and directors; and (9) all other facts necessary to give an accurate and comprehensive view of the cost of maintaining and operating the plant as well as the district.

Source: Laws 1965, c. 269, § 2, p. 769.

46-587 Audit; information made available.

The audit and report shall be made at the close of the fiscal year. The person making the examination and audit shall have access to all books, records, vouchers, papers, contracts or other data containing information on said subject (1) in the office of the reclamation district, (2) in the office of the general manager of the district, or (3) in the possession or under the control of any of the officers, agents or servants of the district. It is hereby made the duty of all officers, agents and servants of the reclamation district to furnish to the Auditor of Public Accounts, his agents, servants and employees, such information regarding the auditing of such reclamation districts as may be demanded.

Source: Laws 1965, c. 269, § 3, p. 770.

**ARTICLE 6
GROUND WATER**

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.
Water quality monitoring, see Chapter 46, article 13.

(a) REGISTRATION OF WATER WELLS

- Section
- 46-601. Ground water; declaration of policy.
- 46-601.01. Terms, defined.
- 46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.
- 46-602.01. Water well in management area; duties; prohibited acts; penalty.
- 46-603. Repealed. Laws 1993, LB 131, § 65.
- 46-604. Registration form; copies; disposition.
- 46-605. Repealed. Laws 1986, LB 886, § 6.
- 46-606. Water wells; registration fees; disposition.
- 46-607. Repealed. Laws 1993, LB 131, § 65.
- 46-608. Ground water; conservation; declaration of policy.
- 46-609. Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.
- 46-610. Irrigation water wells; special permit to drill without regard to spacing; application; fee.
- 46-611. Irrigation water wells; spacing requirements not applicable; when.
- 46-612. Repealed. Laws 1993, LB 131, § 65.
- 46-612.01. Transferred to section 46-1127.
- 46-613. Ground water; declaration of policy; preference in use.
- 46-613.01. Ground water; transfer to another state; permit; Department of Natural Resources; conditions.
- 46-613.02. Violation; penalty; false information; enforcement.

GROUND WATER

Section

(b) GROUND WATER CONSERVATION DISTRICTS

- 46-614. Repealed. Laws 1998, LB 896, § 11.
- 46-614.01. Repealed. Laws 1998, LB 896, § 11.
- 46-615. Repealed. Laws 1998, LB 896, § 11.
- 46-616. Repealed. Laws 1998, LB 896, § 11.
- 46-617. Repealed. Laws 1998, LB 896, § 11.
- 46-617.01. Repealed. Laws 1998, LB 896, § 11.
- 46-618. Repealed. Laws 1998, LB 896, § 11.
- 46-619. Repealed. Laws 1998, LB 896, § 11.
- 46-620. Repealed. Laws 1998, LB 896, § 11.
- 46-621. Repealed. Laws 1998, LB 896, § 11.
- 46-622. Repealed. Laws 1998, LB 896, § 11.
- 46-623. Repealed. Laws 1998, LB 896, § 11.
- 46-624. Repealed. Laws 1998, LB 896, § 11.
- 46-625. Repealed. Laws 1998, LB 896, § 11.
- 46-626. Repealed. Laws 1998, LB 896, § 11.
- 46-627. Repealed. Laws 1998, LB 896, § 11.
- 46-628. Repealed. Laws 1998, LB 896, § 11.
- 46-629. Repealed. Laws 1998, LB 896, § 11.
- 46-630. Repealed. Laws 1998, LB 896, § 11.
- 46-631. Repealed. Laws 1998, LB 896, § 11.
- 46-632. Repealed. Laws 1998, LB 896, § 11.
- 46-633. Repealed. Laws 2011, LB 2, § 8.
- 46-634. Repealed. Laws 1998, LB 896, § 11.
- 46-634.01. Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

- 46-635. Ground water, defined.
- 46-635.01. Water well, defined.
- 46-636. Pumping for irrigation purposes; Legislature; finding.
- 46-637. Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

- 46-638. Terms, defined; permits to public water suppliers; director; powers.
- 46-639. Application for permit; contents; fee.
- 46-640. Notice of application; publication; objections; hearing.
- 46-641. Application; hearing, when.
- 46-642. Granting of permit; conditions; priority date.
- 46-643. Repealed. Laws 1987, LB 140, § 15.
- 46-644. Permits; duration; revocation; procedure.
- 46-645. Recharging ground water reservoirs; permits.
- 46-646. Orders or decisions; review.
- 46-647. Right to recover damages; power of eminent domain; not limited.
- 46-648. Permittee; preference in use of ground water.
- 46-649. Director of Natural Resources; rules and regulations.
- 46-650. Act, how cited.

(e) SPACING OF WATER WELLS

- 46-651. Spacing of water wells; distance.
- 46-652. Repealed. Laws 1981, LB 246, § 4.
- 46-653. Spacing of water wells; special permit; application; contents; fee.
- 46-654. Public water supplier; protections applicable; procedure.
- 46-655. Violations; injunction.
- 46-655.01. Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

(f) NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

- 46-656. Transferred to section 46-656.02.
- 46-656.01. Transferred to section 46-701.

IRRIGATION AND REGULATION OF WATER

Section	
46-656.02.	Transferred to section 46-702.
46-656.03.	Transferred to section 46-704.
46-656.04.	Transferred to section 46-705.
46-656.05.	Transferred to section 46-703.
46-656.06.	Repealed. Laws 2004, LB 962, § 119.
46-656.07.	Transferred to section 46-706.
46-656.08.	Transferred to section 46-707.
46-656.09.	Repealed. Laws 2004, LB 962, § 119.
46-656.10.	Transferred to section 46-745.
46-656.11.	Transferred to section 46-708.
46-656.12.	Transferred to section 46-709.
46-656.13.	Transferred to section 46-710.
46-656.14.	Transferred to section 46-711.
46-656.15.	Repealed. Laws 2004, LB 962, § 119.
46-656.16.	Repealed. Laws 2004, LB 962, § 119.
46-656.17.	Repealed. Laws 2004, LB 962, § 119.
46-656.18.	Repealed. Laws 2004, LB 962, § 119.
46-656.19.	Transferred to section 46-712.
46-656.20.	Repealed. Laws 2004, LB 962, § 119.
46-656.21.	Transferred to section 46-744.
46-656.22.	Repealed. Laws 2004, LB 962, § 119.
46-656.23.	Repealed. Laws 2004, LB 962, § 119.
46-656.24.	Transferred to section 46-742.
46-656.25.	Transferred to section 46-739.
46-656.26.	Transferred to section 46-740.
46-656.27.	Transferred to section 46-741.
46-656.28.	Repealed. Laws 2004, LB 962, § 119.
46-656.29.	Transferred to section 46-735.
46-656.30.	Transferred to section 46-736.
46-656.31.	Transferred to section 46-737.
46-656.32.	Transferred to section 46-738.
46-656.33.	Transferred to section 46-751.
46-656.34.	Repealed. Laws 1996, LB 1114, § 75.
46-656.35.	Transferred to section 46-721.
46-656.36.	Transferred to section 46-722.
46-656.37.	Transferred to section 46-723.
46-656.38.	Transferred to section 46-724.
46-656.39.	Transferred to section 46-725.
46-656.40.	Transferred to section 46-726.
46-656.41.	Transferred to section 46-727.
46-656.42.	Transferred to section 46-728.
46-656.43.	Transferred to section 46-729.
46-656.44.	Transferred to section 46-730.
46-656.45.	Transferred to section 46-731.
46-656.46.	Transferred to section 46-732.
46-656.47.	Transferred to section 46-733.
46-656.48.	Transferred to section 46-734.
46-656.49.	Repealed. Laws 2004, LB 962, § 119.
46-656.50.	Repealed. Laws 2004, LB 962, § 119.
46-656.51.	Repealed. Laws 2004, LB 962, § 119.
46-656.52.	Repealed. Laws 2004, LB 962, § 119.
46-656.53.	Repealed. Laws 2004, LB 962, § 119.
46-656.54.	Repealed. Laws 2004, LB 962, § 119.
46-656.55.	Repealed. Laws 2004, LB 962, § 119.
46-656.56.	Repealed. Laws 2004, LB 962, § 119.
46-656.57.	Repealed. Laws 2004, LB 962, § 119.
46-656.58.	Repealed. Laws 2004, LB 962, § 119.
46-656.59.	Repealed. Laws 2004, LB 962, § 119.
46-656.60.	Repealed. Laws 2004, LB 962, § 119.
46-656.61.	Repealed. Laws 2004, LB 962, § 119.
46-656.62.	Transferred to section 46-748.

GROUND WATER

Section	
46-656.63.	Transferred to section 46-746.
46-656.64.	Transferred to section 46-747.
46-656.65.	Transferred to section 46-749.
46-656.66.	Transferred to section 46-750.
46-656.67.	Transferred to section 46-752.
46-657.	Transferred to section 46-656.07.
46-658.	Repealed. Laws 1996, LB 108, § 80.
46-658.01.	Repealed. Laws 1986, LB 894, § 32.
46-659.	Transferred to section 46-656.29.
46-660.	Transferred to section 46-656.30.
46-661.	Transferred to section 46-656.31.
46-662.	Transferred to section 46-656.32.
46-663.	Transferred to section 46-656.08.
46-663.01.	Transferred to section 46-656.09.
46-663.02.	Transferred to section 46-656.10.
46-664.	Transferred to section 46-656.11.
46-665.	Repealed. Laws 1996, LB 108, § 80.
46-666.	Transferred to section 46-656.25.
46-666.01.	Transferred to section 46-656.23.
46-667.	Repealed. Laws 1996, LB 108, § 80.
46-668.	Transferred to section 46-656.64.
46-669.	Transferred to section 46-656.66.
46-670.	Transferred to section 46-656.33.
46-671.	Transferred to section 46-656.65.
46-672.	Transferred to section 46-656.24.
46-673.	Transferred to section 46-656.34.
46-673.01.	Transferred to section 46-656.12.
46-673.02.	Transferred to section 46-656.13.
46-673.03.	Transferred to section 46-656.14.
46-673.04.	Transferred to section 46-656.15.
46-673.05.	Transferred to section 46-656.19.
46-673.06.	Transferred to section 46-656.20.
46-673.07.	Transferred to section 46-656.21.
46-673.08.	Repealed. Laws 1996, LB 108, § 80.
46-673.09.	Repealed. Laws 1996, LB 108, § 80.
46-673.10.	Transferred to section 46-656.26.
46-673.11.	Transferred to section 46-656.27.
46-673.12.	Repealed. Laws 1996, LB 108, § 80.
46-673.13.	Transferred to section 46-656.22.
46-673.14.	Transferred to section 46-656.16.
46-673.15.	Transferred to section 46-656.17.
46-673.16.	Transferred to section 46-656.18.
46-674.	Transferred to section 46-656.01.
46-674.01.	Transferred to section 46-663.02.
46-674.02.	Transferred to section 46-656.03.
46-674.03.	Transferred to section 46-656.35.
46-674.04.	Transferred to section 46-656.36.
46-674.05.	Transferred to section 46-656.37.
46-674.06.	Transferred to section 46-656.38.
46-674.07.	Transferred to section 46-656.39.
46-674.08.	Transferred to section 46-656.40.
46-674.09.	Transferred to section 46-656.41.
46-674.10.	Transferred to section 46-656.42.
46-674.11.	Transferred to section 46-656.43.
46-674.12.	Transferred to section 46-656.45.
46-674.13.	Transferred to section 46-656.46.
46-674.14.	Transferred to section 46-656.47.
46-674.15.	Repealed. Laws 1996, LB 108, § 80.
46-674.16.	Transferred to section 46-656.48.
46-674.17.	Transferred to section 46-656.63.
46-674.18.	Transferred to section 46-656.44.

§ 46-601

IRRIGATION AND REGULATION OF WATER

Section

- 46-674.19. Repealed. Laws 1996, LB 108, § 80; Laws 1996, LB 1114, § 75.
- 46-674.20. Transferred to section 46-656.04.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

- 46-675. Legislative findings and declarations.
- 46-676. Terms, defined.
- 46-676.01. Applicability of act.
- 46-677. Withdrawal of ground water for industrial purposes; permit required; when.
- 46-678. Permit; application; contents.
- 46-678.01. Withdrawal and transfer of less than 150 acre-feet; notice; metering.
- 46-679. Application; director; determination as to completeness.
- 46-680. Completed application; public hearing; when.
- 46-681. Public hearing; evidence presented.
- 46-682. Applicant; agreement with other water users; filing.
- 46-683. Permit; issuance; consideration; conditions.
- 46-683.01. Permit; application to amend; procedures; limitation.
- 46-684. Permit; revocation; procedure; violation of terms of permit; director; powers and duties.
- 46-685. Order or decision; appeal by affected person.
- 46-686. Injured person; remedies available.
- 46-686.01. Withdrawal and transfer of less than 150 acre-feet; injured person; hearing; civil action; appeal; attorney's fees.
- 46-687. Violation; penalty.
- 46-688. Director; rules and regulations.
- 46-689. Permitholder; subject to control area regulations.
- 46-690. Act, how cited.

(h) TRANSFERS

- 46-691. Transfer off overlying land; when allowed; objection; procedure; natural resources district; powers and duties; Director of Natural Resources; duties.
- 46-691.01. Transfer off overlying land for domestic use; limitations; liability.
- 46-691.02. Transfer off overlying land for domestic use; applicability of section.
- 46-691.03. Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.

(i) REPUBLICAN RIVER BASIN

- 46-692. Repealed. Laws 2011, LB 1, § 1.

(a) REGISTRATION OF WATER WELLS

46-601 Ground water; declaration of policy.

The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state. Complete information as to the occurrence and the use of ground water in the state is essential to the development of a sound ground water policy. The registration of all water wells in this state should be required.

Source: Laws 1957, c. 200, § 1, p. 702; Laws 1967, c. 281, § 1, p. 760; Laws 1993, LB 131, § 1.

46-601.01 Terms, defined.

For purposes of Chapter 46, article 6:

(1)(a) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or

injecting fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Source: Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1; Laws 2004, LB 962, § 34; Laws 2007, LB701, § 17.

Cross References

For additional definitions, see section 46-706.

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 Environment and Energy 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 Environment and Energy 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; Laws 2021, LB148, § 54. Operative date July 1, 2021.

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.

46-602.01 Water well in management area; duties; prohibited acts; penalty.

Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a licensed water well contractor as defined in section 46-1213 or a licensed pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Source: Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4; Laws 2006, LB 508, § 3; Laws 2007, LB463, § 1141.

Cross References

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

46-603 Repealed. Laws 1993, LB 131, § 65.**46-604 Registration form; copies; disposition.**

The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the licensed water well contractor as defined in section 46-1213.

Source: Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5; Laws 2007, LB463, § 1142.

46-605 Repealed. Laws 1986, LB 886, § 6.**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.

46-607 Repealed. Laws 1993, LB 131, § 65.

46-608 Ground water; conservation; declaration of policy.

The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state, that the drilling of irrigation water wells in the state without regard to spacing is detrimental to the public welfare, and that the spacing of irrigation water wells should be regulated.

Source: Laws 1957, c. 201, § 1, p. 704; Laws 1993, LB 131, § 7.

46-609 Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.

(1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty days after completion of such water well.

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other

than its intended purpose for use for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB701, § 19.

46-610 Irrigation water wells; special permit to drill without regard to spacing; application; fee.

(1) Any person may apply to the Director of Natural Resources for a special permit to drill an irrigation water well without regard to the spacing requirements of section 46-609 and shall pay a fee to the Department of Natural Resources of twelve dollars and fifty cents, which fee shall be remitted to the State Treasurer for credit to the General Fund. Such application shall be in such form as the director directs and shall contain a statement of the proposed location of the irrigation water well, the reason for seeking such special permit, the legal description of the land to be irrigated by the irrigation water well, the number of acres to be irrigated, the proposed size of the irrigation water well, the estimated capacity of the irrigation water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to construct the irrigation water well.

(2) A separate application, like that provided for in subsection (1) of this section, shall be submitted for each irrigation water well for which a special permit is sought. When considering the approval or rejection of any application, the director shall consider the size, shape, and irrigation needs of the property for which such special permit is sought, the known ground water supply, the effect on the ground water supply and the surrounding land of the irrigation water well for which such special permit is sought, any waiver or agreement allowing the new irrigation water well by the owner of any registered irrigation water well less than six hundred feet from the location of the proposed new irrigation water well, and such other information as may be available. Such application may be approved or disapproved in whole or in part or may be approved with conditions, and the special permit shall be issued or refused accordingly.

Source: Laws 1957, c. 201, § 3, p. 705; Laws 1993, LB 131, § 9; Laws 2000, LB 900, § 173.

46-611 Irrigation water wells; spacing requirements not applicable; when.

The prohibitions of section 46-609 shall not apply to the location of more than one irrigation water well by a landowner on his or her own farm, so long as each such irrigation water well is at least six hundred feet from any other irrigation water well located on a neighboring farm under separate ownership.

Source: Laws 1957, c. 201, § 4, p. 705; Laws 1993, LB 131, § 10.

46-612 Repealed. Laws 1993, LB 131, § 65.

46-612.01 Transferred to section 46-1127.

46-613 Ground water; declaration of policy; preference in use.

Preference in the use of ground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, (1) domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations and (2) agricultural purposes shall include, but not be limited to, aquaculture as defined in section 2-3804.01.

Source: Laws 1957, c. 199, § 1, p. 701; Laws 1963, c. 279, § 1, p. 835; Laws 1995, LB 871, § 4.

Defendant liable in damages for withdrawal of irrigation ground water resulting in loss of artesian pressure in plaintiffs' adjacent domestic use wells. Prather v. Eisenmann, 200 Neb. 1, 261 N.W.2d 766 (1978).

The use of ground water by a municipality for human needs is a public use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

46-613.01 Ground water; transfer to another state; permit; Department of Natural Resources; conditions.

The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or other entity intending to withdraw ground water from any water well located in the State of Nebraska and transport it for use in another state shall apply to the Department of Natural Resources for a permit to do so. In determining whether to grant or deny such permit, the Director of Natural Resources shall consider:

- (1) The nature of the proposed use and whether it is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (4) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;

(6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (6) of this section when considered in conjunction with all other transfers subject to this section; and

(7) Any other factors consistent with the purposes of this section that the director deems relevant to protect the health, safety, and welfare of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the district or the department.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

Source: Laws 1967, c. 281, § 5, p. 761; Laws 1969, c. 9, § 69, p. 144; Laws 1984, LB 1060, § 1; Laws 1993, LB 131, § 11; Laws 2000, LB 900, § 174; Laws 2003, LB 619, § 7.

This section does not unlawfully delegate legislative power to the director of the Department of Water Resources. This section is not unconstitutionally vague. This section does not discriminate against interstate commerce. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W.2d 151 (1996).

Severance of the portion of this section, to wit, "if the state in which the water is to be used grants reciprocal rights to withdraw and transport ground water from that state for use in the State of Nebraska", did not constitute an inducement to the passage of the statute, does not make the act inoperative, and will not frustrate the intent of the Legislature. The remainder of the statute, after the unconstitutional portion is stricken, remains a viable statute. *State ex rel. Douglas v. Sporhase*, 213 Neb. 484, 329 N.W.2d 855 (1983).

Requirement of obtaining permit to transfer ground water out of state does not violate commerce clause, U.S. Const. Art. I, § 8, since Nebraska ground water is not an article of commerce. Reciprocity provision does not violate due process guarantees since it is but a condition upon which the statute takes effect. This section does not violate equal protection since it operates equally upon all members of the class affected and class bears a reasonable relationship to a legitimate state interest. This section does not deprive affected persons of liberty or property since they have no property right in the water itself and are not at liberty to transfer ground water off overlying land without public consent. *State ex rel. Douglas v. Sporhase*, 208 Neb. 703, 305 N.W.2d 614 (1981).

46-613.02 Violation; penalty; false information; enforcement.

Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. Each day of a violation may be considered a separate offense. The Attorney General and the county attorneys may pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Source: Laws 1978, LB 688, § 1; Laws 1984, LB 1060, § 2; Laws 1993, LB 131, § 12; Laws 2000, LB 900, § 175; Laws 2004, LB 962, § 37.

(b) GROUND WATER CONSERVATION DISTRICTS

46-614 Repealed. Laws 1998, LB 896, § 11.

46-614.01 Repealed. Laws 1998, LB 896, § 11.

46-615 Repealed. Laws 1998, LB 896, § 11.

46-616 Repealed. Laws 1998, LB 896, § 11.

46-617 Repealed. Laws 1998, LB 896, § 11.

46-617.01 Repealed. Laws 1998, LB 896, § 11.

- 46-618 Repealed. Laws 1998, LB 896, § 11.
- 46-619 Repealed. Laws 1998, LB 896, § 11.
- 46-620 Repealed. Laws 1998, LB 896, § 11.
- 46-621 Repealed. Laws 1998, LB 896, § 11.
- 46-622 Repealed. Laws 1998, LB 896, § 11.
- 46-623 Repealed. Laws 1998, LB 896, § 11.
- 46-624 Repealed. Laws 1998, LB 896, § 11.
- 46-625 Repealed. Laws 1998, LB 896, § 11.
- 46-626 Repealed. Laws 1998, LB 896, § 11.
- 46-627 Repealed. Laws 1998, LB 896, § 11.
- 46-628 Repealed. Laws 1998, LB 896, § 11.
- 46-629 Repealed. Laws 1998, LB 896, § 11.
- 46-630 Repealed. Laws 1998, LB 896, § 11.
- 46-631 Repealed. Laws 1998, LB 896, § 11.
- 46-632 Repealed. Laws 1998, LB 896, § 11.
- 46-633 Repealed. Laws 2011, LB 2, § 8.
- 46-634 Repealed. Laws 1998, LB 896, § 11.
- 46-634.01 Repealed. Laws 2011, LB 2, § 8.

(c) PUMPING FOR IRRIGATION PURPOSES

46-635 Ground water, defined.

Ground water is that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.

Source: Laws 1963, c. 274, § 1, p. 827.

Ground water as defined herein does not include water artificially applied to the land. *Peters v. Langrehr*, 188 Neb. 480, 197 N.W.2d 698 (1972).

46-635.01 Water well, defined.

For purposes of sections 46-636 and 46-637, water well shall have the same meaning as in section 46-601.01.

Source: Laws 1993, LB 131, § 15.

46-636 Pumping for irrigation purposes; Legislature; finding.

The Legislature finds that the pumping of water for irrigation purposes from water wells located within fifty feet of the bank of a channel of any natural stream may have a direct effect on the surface flow of such stream.

Source: Laws 1963, c. 275, § 1, p. 828; Laws 1993, LB 131, § 16; Laws 2001, LB 667, § 7.

Cross References

For additional definitions, see section 46-706.

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.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-638 Terms, defined; permits to public water suppliers; director; powers.

(1) The Director of Natural Resources may grant and administer permits to public water suppliers: (a) To locate, develop, and maintain ground water supplies through water wells or other means and to transport water into the area to be served; and (b) to continue existing use of ground water and the transportation of ground water into the area served.

(2) For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act and sections 46-651 to 46-655, (a) public water supplier shall mean a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes and (b) water well shall have the same meaning as in section 46-601.01.

Source: Laws 1963, c. 276, § 1, p. 829; Laws 1980, LB 643, § 2; Laws 1993, LB 131, § 18; Laws 2000, LB 900, § 177.

Cross References

For additional definitions, see section 46-706.

Permittees under the Municipal and Rural Domestic Ground Water Transfers Permit Act are exonerated from the common-law prohibition against transfer and transportation of ground water. *Sorensen v. Lower Niobrara Nat. Resources Dist.*, 221 Neb. 180, 376 N.W.2d 539 (1985).

Director of Water Resources is authorized to grant and administer permits to cities and villages to develop ground water supplies. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

46-639 Application for permit; contents; fee.

An applicant which desires to avail itself of the Municipal and Rural Domestic Ground Water Transfers Permit Act shall make application in writing to the Director of Natural Resources for a permit. The application shall include (1) a statement of the amount of water for which a permit is desired together with an exhibit of maps showing the location of all water wells and (2) such other information as the director deems necessary or desirable. The application shall be accompanied by a fee in the amount of fifty dollars for the first five million gallons per day and an additional twenty dollars for each additional increment of five million gallons per day requested. The fee shall be based on the amounts of water requested on a daily average basis.

Source: Laws 1963, c. 276, § 2, p. 829; Laws 1993, LB 131, § 19; Laws 2000, LB 900, § 178.

Preference in the use of ground water is given to domestic use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

46-640 Notice of application; publication; objections; hearing.

Upon receipt of an application filed under section 46-639, the Director of Natural Resources shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which the water well field or any part of such water well field is or is proposed to be located. The notice shall contain a description of the lands upon which such water well field is or is proposed to be located, the amount of water requested, the number of water wells constructed or proposed, and any other relevant information. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections specifically stating the grounds for each objection within two weeks after the date of final publication in the office of the director.

Source: Laws 1963, c. 276, § 3, p. 829; Laws 1986, LB 960, § 33; Laws 1987, LB 140, § 12; Laws 1991, LB 278, § 3; Laws 1993, LB 131, § 20; Laws 2000, LB 900, § 179.

46-641 Application; hearing, when.

The Department of Natural Resources may hold a hearing on an application filed under section 46-639 on its own motion and shall hold a hearing on such an application if requested by any person pursuant to section 46-640.

Source: Laws 1963, c. 276, § 4, p. 830; Laws 1987, LB 140, § 13; Laws 2000, LB 900, § 180.

46-642 Granting of permit; conditions; priority date.

(1) If the Director of Natural Resources finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the director.

(2) In determining whether to grant or deny a permit under subsection (1) of this section, the director shall consider the factors set forth in subdivisions (1) through (7) of section 46-613.01.

Source: Laws 1963, c. 276, § 5, p. 830; Laws 1967, c. 284, § 1, p. 772; Laws 1987, LB 140, § 14; Laws 2000, LB 900, § 181; Laws 2003, LB 619, § 8.

46-643 Repealed. Laws 1987, LB 140, § 15.

46-644 Permits; duration; revocation; procedure.

Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than five years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

Source: Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182; Laws 2007, LB701, § 20.

46-645 Recharging ground water reservoirs; permits.

The Director of Natural Resources may grant to any public water supplier permits to store excess, unused, and unappropriated water for recharging ground water reservoirs. The procedure to be followed in granting permits to utilize excess, unused, and unappropriated water for recharging ground water reservoirs shall, so far as applicable, be the same as that required for granting permits for the use of ground water as provided in the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 1963, c. 276, § 8, p. 831; Laws 1980, LB 643, § 3; Laws 2000, LB 900, § 183.

46-646 Orders or decisions; review.

Any person who feels aggrieved by any order or decision in connection with the granting or denial, in whole or in part, of an application for a permit or in connection with the revocation or modification of a permit may institute proceedings in the Court of Appeals in the manner provided for in section 61-207.

Source: Laws 1963, c. 276, § 9, p. 831; Laws 1991, LB 732, § 109; Laws 2000, LB 900, § 184.

46-647 Right to recover damages; power of eminent domain; not limited.

Nothing in sections 46-638 to 46-650 shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his or her land or to any water rights appurtenant thereto;

nor shall sections 46-638 to 46-650 limit rights of condemnation which public water suppliers have under the laws of the State of Nebraska.

Source: Laws 1963, c. 276, § 10, p. 831; Laws 1980, LB 643, § 4.

This section supplies a remedy of compensatory damages for a permittee's injury to another's land or water rights in contrast with injunctive relief available under common law. *Sorensen v. Lower Niobrara Nat. Resources Dist.*, 221 Neb. 180, 376 N.W.2d 539 (1985).

Remedy in damages is given to landowners injured by granting of permit to use ground waters. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

46-648 Permittee; preference in use of ground water.

The use of ground water pursuant to a permit granted by the Director of Natural Resources under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be subject to and governed by section 46-613.

Source: Laws 1963, c. 276, § 11, p. 832; Laws 2000, LB 900, § 185.

Use of ground water pursuant to a permit is governed by section 46-613. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

46-649 Director of Natural Resources; rules and regulations.

The Director of Natural Resources may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 1963, c. 276, § 12, p. 832; Laws 2000, LB 900, § 186.

46-650 Act, how cited.

Sections 46-638 to 46-650 shall be known and cited as the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 1963, c. 276, § 14, p. 832; Laws 1980, LB 643, § 5.

A rural water district is not a municipal corporation within the purview of the City, Village and Municipal Corporation Ground Water Permit Act (now the Municipal and Rural Do-

mestic Ground Water Transfers Permit Act). *McDowell v. Rural Water District No. 2*, 204 Neb. 401, 282 N.W.2d 594 (1979).

(e) SPACING OF WATER WELLS

46-651 Spacing of water wells; distance.

(1) Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) An existing water well for which a change in the intended use is proposed shall be subject to any spacing requirement in subsection (1) of this section that would apply to the drilling of a new water well at the same location for the new use intended.

(3) The well-spacing protection of subsections (1) and (2) of this section shall apply to an unregistered water well for a period of only sixty days following completion of such water well.

(4) The spacing requirements in subsection (1) of this section shall not apply to any replacement water well if that water well is drilled within fifty feet of the water well being replaced and if the water well being replaced was drilled prior to July 16, 2004, was in compliance with any applicable spacing statute when drilled, and is less than one thousand feet from the registered water well for which spacing protection is provided.

Source: Laws 1965, c. 270, § 1, p. 771; Laws 1979, LB 201, § 1; Laws 1980, LB 643, § 6; Laws 1981, LB 246, § 2; Laws 1993, LB 131, § 21; Laws 2004, LB 962, § 38.

Cross References

For definitions, see sections 46-638 and 46-706.

46-652 Repealed. Laws 1981, LB 246, § 4.

46-653 Spacing of water wells; special permit; application; contents; fee.

Any person may apply to the Director of Natural Resources for a special permit to drill or to change the intended use of a water well without regard to the spacing requirements of section 46-651. Such application shall be on a form prescribed and furnished by the director and shall contain a statement of the precise location of the water well or proposed water well, facts justifying the request for such special permit, the size or proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and, if applicable, the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which shall be remitted to the State Treasurer for credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for the special permit, the known ground water supply, and such other pertinent information as may be available. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

Source: Laws 1965, c. 270, § 3, p. 771; Laws 1993, LB 131, § 22; Laws 2000, LB 900, § 187; Laws 2004, LB 962, § 39.

46-654 Public water supplier; protections applicable; procedure.

(1) Any public water supplier having a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act is hereby granted the protection of sections 46-651 to 46-655 for all water wells for which a permit has been or in the future is granted by the Department of Natural Resources under such act.

(2) If in its application for a permit pursuant to such act a public water supplier requests the protection of the spacing requirements of section 46-651 for test holes and water wells under construction and if the permit is granted, the Director of Natural Resources shall identify in the permit the area to which the spacing protection will apply and the spacing protection of section 46-651 shall then apply to such area for a period of one year from the date the permit is granted. The director shall notify, by certified or registered mail, owners and occupiers of land affected by the granting of such spacing protection, according to information supplied by the applicant. Costs of providing such notice shall be borne by the applicant. Owners or occupiers of land not receiving the notice

required by this subsection shall not be bound by the spacing requirements until the applicant's water wells are completed. Such protection may be extended by the director, by a similar procedure, upon application by the public water supplier and good cause shown, for additional one-year periods.

Source: Laws 1965, c. 270, § 4, p. 772; Laws 1980, LB 643, § 8; Laws 1987, LB 93, § 14; Laws 1993, LB 131, § 23; Laws 2000, LB 900, § 188.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-655 Violations; injunction.

Any violation of the provisions of sections 46-651 to 46-655 may be enjoined in an action brought in the district court of the county in which such violation or any attempted or threatened violation occurs.

Source: Laws 1965, c. 270, § 5, p. 772.

46-655.01 Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

(1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

- (a) The legal description of the land being considered as a public water supply wellfield; and
- (b) Written consent of the owner of the land considered for a public water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

- (a) Provide a copy of the notice of intent or notice of renewal to the owners of land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice;
- (b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and
- (c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

- (i) One thousand feet; or
- (ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.
- (b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.
- (c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.
- (6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, all affected natural resources districts, the owner of the land described in the notice of intent, and the owners of all land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice of intent of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Source: Laws 2004, LB 962, § 40; Laws 2006, LB 1226, § 16.

(f) NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

46-656 Transferred to section 46-656.02.

46-656.01 Transferred to section 46-701.

46-656.02 Transferred to section 46-702.

46-656.03 Transferred to section 46-704.

46-656.04 Transferred to section 46-705.

46-656.05 Transferred to section 46-703.

46-656.06 Repealed. Laws 2004, LB 962, § 119.

46-656.07 Transferred to section 46-706.

46-656.08 Transferred to section 46-707.

46-656.09 Repealed. Laws 2004, LB 962, § 119.

46-656.10 Transferred to section 46-745.

46-656.11 Transferred to section 46-708.

46-656.12 Transferred to section 46-709.

46-656.13 Transferred to section 46-710.

46-656.14 Transferred to section 46-711.

- 46-656.15 Repealed. Laws 2004, LB 962, § 119.
- 46-656.16 Repealed. Laws 2004, LB 962, § 119.
- 46-656.17 Repealed. Laws 2004, LB 962, § 119.
- 46-656.18 Repealed. Laws 2004, LB 962, § 119.
- 46-656.19 Transferred to section 46-712.
- 46-656.20 Repealed. Laws 2004, LB 962, § 119.
- 46-656.21 Transferred to section 46-744.
- 46-656.22 Repealed. Laws 2004, LB 962, § 119.
- 46-656.23 Repealed. Laws 2004, LB 962, § 119.
- 46-656.24 Transferred to section 46-742.
- 46-656.25 Transferred to section 46-739.
- 46-656.26 Transferred to section 46-740.
- 46-656.27 Transferred to section 46-741.
- 46-656.28 Repealed. Laws 2004, LB 962, § 119.
- 46-656.29 Transferred to section 46-735.
- 46-656.30 Transferred to section 46-736.
- 46-656.31 Transferred to section 46-737.
- 46-656.32 Transferred to section 46-738.
- 46-656.33 Transferred to section 46-751.
- 46-656.34 Repealed. Laws 1996, LB 1114, § 75.
- 46-656.35 Transferred to section 46-721.
- 46-656.36 Transferred to section 46-722.
- 46-656.37 Transferred to section 46-723.
- 46-656.38 Transferred to section 46-724.
- 46-656.39 Transferred to section 46-725.
- 46-656.40 Transferred to section 46-726.
- 46-656.41 Transferred to section 46-727.
- 46-656.42 Transferred to section 46-728.
- 46-656.43 Transferred to section 46-729.
- 46-656.44 Transferred to section 46-730.
- 46-656.45 Transferred to section 46-731.

46-656.46 Transferred to section 46-732.
46-656.47 Transferred to section 46-733.
46-656.48 Transferred to section 46-734.
46-656.49 Repealed. Laws 2004, LB 962, § 119.
46-656.50 Repealed. Laws 2004, LB 962, § 119.
46-656.51 Repealed. Laws 2004, LB 962, § 119.
46-656.52 Repealed. Laws 2004, LB 962, § 119.
46-656.53 Repealed. Laws 2004, LB 962, § 119.
46-656.54 Repealed. Laws 2004, LB 962, § 119.
46-656.55 Repealed. Laws 2004, LB 962, § 119.
46-656.56 Repealed. Laws 2004, LB 962, § 119.
46-656.57 Repealed. Laws 2004, LB 962, § 119.
46-656.58 Repealed. Laws 2004, LB 962, § 119.
46-656.59 Repealed. Laws 2004, LB 962, § 119.
46-656.60 Repealed. Laws 2004, LB 962, § 119.
46-656.61 Repealed. Laws 2004, LB 962, § 119.
46-656.62 Transferred to section 46-748.
46-656.63 Transferred to section 46-746.
46-656.64 Transferred to section 46-747.
46-656.65 Transferred to section 46-749.
46-656.66 Transferred to section 46-750.
46-656.67 Transferred to section 46-752.
46-657 Transferred to section 46-656.07.
46-658 Repealed. Laws 1996, LB 108, § 80.
46-658.01 Repealed. Laws 1986, LB 894, § 32.
46-659 Transferred to section 46-656.29.
46-660 Transferred to section 46-656.30.
46-661 Transferred to section 46-656.31.
46-662 Transferred to section 46-656.32.
46-663 Transferred to section 46-656.08.
46-663.01 Transferred to section 46-656.09.

- 46-663.02 Transferred to section 46-656.10.
- 46-664 Transferred to section 46-656.11.
- 46-665 Repealed. Laws 1996, LB 108, § 80.
- 46-666 Transferred to section 46-656.25.
- 46-666.01 Transferred to section 46-656.23.
- 46-667 Repealed. Laws 1996, LB 108, § 80.
- 46-668 Transferred to section 46-656.64.
- 46-669 Transferred to section 46-656.66.
- 46-670 Transferred to section 46-656.33.
- 46-671 Transferred to section 46-656.65.
- 46-672 Transferred to section 46-656.24.
- 46-673 Transferred to section 46-656.34.
- 46-673.01 Transferred to section 46-656.12.
- 46-673.02 Transferred to section 46-656.13.
- 46-673.03 Transferred to section 46-656.14.
- 46-673.04 Transferred to section 46-656.15.
- 46-673.05 Transferred to section 46-656.19.
- 46-673.06 Transferred to section 46-656.20.
- 46-673.07 Transferred to section 46-656.21.
- 46-673.08 Repealed. Laws 1996, LB 108, § 80.
- 46-673.09 Repealed. Laws 1996, LB 108, § 80.
- 46-673.10 Transferred to section 46-656.26.
- 46-673.11 Transferred to section 46-656.27.
- 46-673.12 Repealed. Laws 1996, LB 108, § 80.
- 46-673.13 Transferred to section 46-656.22.
- 46-673.14 Transferred to section 46-656.16.
- 46-673.15 Transferred to section 46-656.17.
- 46-673.16 Transferred to section 46-656.18.
- 46-674 Transferred to section 46-656.01.
- 46-674.01 Transferred to section 46-663.02.
- 46-674.02 Transferred to section 46-656.03.

- 46-674.03 Transferred to section 46-656.35.
- 46-674.04 Transferred to section 46-656.36.
- 46-674.05 Transferred to section 46-656.37.
- 46-674.06 Transferred to section 46-656.38.
- 46-674.07 Transferred to section 46-656.39.
- 46-674.08 Transferred to section 46-656.40.
- 46-674.09 Transferred to section 46-656.41.
- 46-674.10 Transferred to section 46-656.42.
- 46-674.11 Transferred to section 46-656.43.
- 46-674.12 Transferred to section 46-656.45.
- 46-674.13 Transferred to section 46-656.46.
- 46-674.14 Transferred to section 46-656.47.
- 46-674.15 Repealed. Laws 1996, LB 108, § 80.
- 46-674.16 Transferred to section 46-656.48.
- 46-674.17 Transferred to section 46-656.63.
- 46-674.18 Transferred to section 46-656.44.
- 46-674.19 Repealed. Laws 1996, LB 108, § 80; Laws 1996, LB 1114, § 75.
- 46-674.20 Transferred to section 46-656.04.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-675 Legislative findings and declarations.

The Legislature finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users in situations where industrial users withdraw significant quantities of ground water from the aquifers of the state and in situations where such ground water is transferred from the water well site for use at another location.

Source: Laws 1981, LB 56, § 1; Laws 1993, LB 131, § 33.

46-676 Terms, defined.

For purposes of the Industrial Ground Water Regulatory Act:

- (1) The definitions found in section 46-706 are used;
- (2) Department means the Department of Natural Resources; and
- (3) Director means the Director of Natural Resources.

Source: Laws 1981, LB 56, § 2; Laws 1996, LB 108, § 74; Laws 2000, LB 900, § 220; Laws 2004, LB 962, § 94.

46-676.01 Applicability of act.

The Industrial Ground Water Regulatory Act does not apply to any public water supplier providing, or intending to provide, ground water for industrial purposes nor does the act apply to any person who is using, or intends to use, ground water for industrial purposes that is supplied by a public water supplier.

Source: Laws 2005, LB 335, § 75.

46-677 Withdrawal of ground water for industrial purposes; permit required; when.

(1) Except as provided in sections 46-676.01 and 46-678.01:

(a) Any person who desires to withdraw and transfer ground water from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any water wells, obtain from the director a permit to authorize such withdrawal and transfer of such ground water; and

(b) Any person who prior to April 23, 1993, has withdrawn ground water from aquifers located in the State of Nebraska for industrial purposes may file an application for a permit to authorize the transfer of such ground water at any time.

(2) For purposes of this section, industrial purposes includes manufacturing, commercial, and power generation uses of water and commercial use includes, but is not limited to, maintenance of the turf of a golf course.

Source: Laws 1981, LB 56, § 3; Laws 1993, LB 131, § 34; Laws 1993, LB 789, § 6; Laws 2002, LB 458, § 5; Laws 2005, LB 335, § 76.

46-678 Permit; application; contents.

(1) Applications for permits required by section 46-677 shall be on forms provided by the director and shall contain:

(a) A statement of the amount of ground water which the applicant proposes to use;

(b) A statement of the proposed use and whether the ground water will be transferred for use at a location other than the well site;

(c) A hydrologic evaluation of the impact of the proposed use on the surrounding area and on existing users;

(d) The date when the applicant expects to first use the ground water; and

(e) Such other relevant information as the director may deem necessary or desirable.

(2) Such applications shall be accompanied by an exhibit of maps showing the location, depth, and capacity of the proposed water wells.

Source: Laws 1981, LB 56, § 4; Laws 1993, LB 131, § 35; Laws 1993, LB 789, § 7.

46-678.01 Withdrawal and transfer of less than 150 acre-feet; notice; metering.

Any person who desires to withdraw and transfer a total of less than one hundred fifty acre-feet of ground water per year from aquifers located in the State of Nebraska for industrial purposes to other property within the state which is owned or leased by such person shall provide written notice to the department and install a water meter or meters that meet the approval of the

department. Such notice shall include the amount of the proposed transfer, the point of withdrawal, and the point of delivery and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the point of withdrawal is located. The withdrawal and transfer may be made without a permit issued under the Industrial Ground Water Regulatory Act so long as (1) the property which includes the point of withdrawal and the property which includes the point of delivery are owned or leased by the same person, (2) the water is used by such person, and (3) a total of less than one hundred fifty acre-feet of ground water per year is transferred from all sources to the property which includes the point of delivery.

Source: Laws 1993, LB 789, § 8; Laws 2000, LB 900, § 221; Laws 2004, LB 962, § 95.

46-679 Application; director; determination as to completeness.

Within thirty days of the receipt of an application made under section 46-677, the director shall accept the application as a completed application or return the application to the applicant as an incomplete application. If the application is deemed to be incomplete, the director shall inform the applicant as to the deficiencies in the application.

Source: Laws 1981, LB 56, § 5.

46-680 Completed application; public hearing; when.

(1) After the director has accepted the application made under section 46-677 as a completed application, the director shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing land on which one or more water wells are proposed to be located. The notice shall include (a) the amount of ground water the applicant proposes to use, (b) a description of the proposed use and location of that use, (c) the number of water wells proposed at each location of withdrawal, and (d) any other information deemed necessary by the director to provide adequate notice of the application to interested persons. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections stating the grounds for each objection within two weeks after the date of final publication of the notice. Such objections shall be filed in the headquarters office of the department.

(2) The director may hold a hearing on an application made under section 46-677 at his or her discretion and shall hold a hearing on such an application if requested by any interested person pursuant to subsection (1) of this section.

Source: Laws 1981, LB 56, § 6; Laws 1993, LB 131, § 36; Laws 2004, LB 962, § 96.

46-681 Public hearing; evidence presented.

At the hearing provided for in section 46-680, the applicant shall present all hydrological data and other evidence supporting its application. All interested parties shall be allowed to testify and present evidence relative to the application.

Source: Laws 1981, LB 56, § 7.

46-682 Applicant; agreement with other water users; filing.

The applicant may negotiate with any user of water in order to obtain an agreement whereby the user waives any cause of action against the applicant for damages or injunctive or other relief for interference with such water use, in exchange for financial payment, substitute water, or other compensation. The applicant shall file copies of any such agreements with the director who shall consider the agreements in determining whether to grant or deny a permit. Nothing in this section shall be construed to limit any power of eminent domain possessed by an applicant.

Source: Laws 1981, LB 56, § 8.

46-683 Permit; issuance; consideration; conditions.

(1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be limited to:

- (a) Possible adverse effects on existing surface or ground water users;
- (b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;
- (c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;
- (d) The economic benefit of the applicant's proposed use;
- (e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;
- (f) Any waivers of liability from existing users filed with the director;
- (g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and
- (h) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. If a hearing is held, the director shall issue such written order within ninety days of the hearing.

Source: Laws 1981, LB 56, § 9; Laws 2003, LB 619, § 13; Laws 2006, LB 1226, § 17.

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.

46-684 Permit; revocation; procedure; violation of terms of permit; director; powers and duties.

(1) A permit granted pursuant to section 46-683 shall be revoked, following a hearing conducted in the same manner as hearings conducted pursuant to section 46-680, if the director determines that the permitholder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit or for a period of three consecutive years thereafter.

(2) If it appears to the director that a permitholder has withdrawn more ground water than the amount specified in the permit or has violated any of the conditions specified in the permit, the director shall give written notice to the permitholder of the alleged violation.

Within thirty days following receipt of such notice, the permitholder may:

- (a) File an application to amend the permit as provided in section 46-683.01;
- (b) Request a hearing before the director; or
- (c) Take appropriate measures to comply with the permit.

If the permitholder fails to take action pursuant to subdivision (2)(a), (2)(b), or (2)(c) of this section, the director may issue an order requiring compliance with the permit and seek, if appropriate, a court injunction prohibiting further violations of the permit.

If the permitholder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the water wells are located. Within forty-five days following the hearing, the director shall issue an order containing specific findings of fact with reference to the alleged violation and directing the permitholder, if necessary, to cease and desist from further violations of the permit.

(3) Nothing in this section shall limit the penalty provisions of section 46-687.

Source: Laws 1981, LB 56, § 10; Laws 1986, LB 309, § 4; Laws 1993, LB 131, § 37.

46-685 Order or decision; appeal by affected person.

Any affected person aggrieved by any order issued or final decision made by the director pursuant to the Industrial Ground Water Regulatory Act may appeal the order to the Court of Appeals. For purposes of this section, affected person means the applicant for a permit which is the subject of the director's order or final decision and any owner of an estate or interest in or concerning

land or water whose interest is or may be impacted in a direct and significant manner by the director's order or final decision.

Source: Laws 1981, LB 56, § 11; Laws 1988, LB 352, § 80; Laws 2001, LB 129, § 4.

46-686 Injured person; remedies available.

Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 46-682, may bring an action for damages or injunctive or other relief for any injury done to his or her land or water rights by the holder of a permit issued pursuant to section 46-683. Nothing in the Industrial Ground Water Regulatory Act shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 1981, LB 56, § 12; Laws 2005, LB 335, § 77.

46-686.01 Withdrawal and transfer of less than 150 acre-feet; injured person; hearing; civil action; appeal; attorney's fees.

The director shall have jurisdiction over any ground water withdrawal and transfer made under section 46-678.01. Any person using ground water at the time a notice to transfer is filed under such section whose wells thereafter suffer an unanticipated decline in ground water levels may petition the director for a hearing. Such petition shall specifically set forth the cause and extent of the ground water decline as well as the nature and extent of any injury resulting from that decline. If at such hearing the injured party presents evidence showing that the ground water levels declined as a result of such transfer and shows the nature and extent of any resulting injury, the director may issue an order terminating or conditioning the transfer to eliminate any further injury. If the injured party prevails and an order is issued pursuant to this section, the order shall provide that the person filing the notice of transfer shall pay the costs of the department and of the injured party, including reasonable attorney's fees. The injured party may maintain a civil action against the person filing the notice of transfer to recover the costs of a hydrologic evaluation. The order of the director may be appealed to the Court of Appeals.

Source: Laws 1993, LB 789, § 9; Laws 2000, LB 900, § 222.

46-687 Violation; penalty.

Any person who withdraws or transfers ground water in violation of the Industrial Ground Water Regulatory Act shall be guilty of a Class IV misdemeanor. Each day shall constitute a separate offense in cases of continued violation.

Source: Laws 1981, LB 56, § 13; Laws 1986, LB 309, § 5.

46-688 Director; rules and regulations.

The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Industrial Ground Water Regulatory Act. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 46-678, taking into account the

current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 46-683.

Source: Laws 1981, LB 56, § 14; Laws 2005, LB 335, § 78.

46-689 Permitholder; subject to control area regulations.

Nothing in the Industrial Ground Water Regulatory Act shall be construed to exempt the holder of a permit issued pursuant to section 46-683 from any regulations adopted by a natural resources district pursuant to the Nebraska Ground Water Management and Protection Act for a control area designated before such permit has been granted.

Source: Laws 1981, LB 56, § 15; Laws 1996, LB 108, § 75.

Cross References

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

46-690 Act, how cited.

Sections 46-675 to 46-690 shall be known and may be cited as the Industrial Ground Water Regulatory Act.

Source: Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10; Laws 2005, LB 335, § 79.

(h) TRANSFERS

46-691 Transfer off overlying land; when allowed; objection; procedure; natural resources district; powers and duties; Director of Natural Resources; duties.

(1) Any person who withdraws ground water for agricultural purposes, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, from aquifers located within the State of Nebraska may transfer the use of the ground water off the overlying land if the ground water is put to a reasonable and beneficial use within the State of Nebraska and is used for an agricultural purpose, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, after transfer, and if such withdrawal, transfer, and use (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. The determination made by a natural resources district under subsection (2) of this section or the Director of Natural Resources under subsection (3) of this section shall include consideration of the factors set forth in subdivisions (1) through (7) of section 46-613.01. For purposes of this section, domestic has the same meaning as in section 46-613.

(2) Any affected party may object to the transfer of ground water by filing written objections, specifically stating the grounds for such objection, in the office of the natural resources district containing the land from which the ground water is withdrawn. Upon the filing of such objections or on its own initiative, the natural resources district shall conduct a preliminary investigation to determine if the withdrawal, transfer, and use of ground water is consistent with the requirements of subsection (1) of this section. Following the preliminary investigation, if the district has reason to believe that the withdraw-

al, transfer, or use may not comply with any rule or regulation of the district, it may utilize its authority under the Nebraska Ground Water Management and Protection Act to prohibit such withdrawal, transfer, or use. If the district has reason to believe that the withdrawal, transfer, and use is consistent with all rules and regulations of the district but may not comply with one or more other requirements of subsection (1) of this section, the district shall request that the Department of Natural Resources hold a hearing on such transfer.

(3) At the hearing, all interested persons may appear and present testimony. Agencies or political subdivisions of this state and the appropriate natural resources districts shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing, if the Director of Natural Resources finds that the withdrawal, transfer, or use of ground water is contrary to the requirements of subsection (1) of this section, he or she shall issue a cease and desist order prohibiting the withdrawal and transfer.

(4) The director may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1995, LB 251, § 1; Laws 2000, LB 900, § 223; Laws 2003, LB 619, § 14.

Cross References

Environmental Protection Act, see section 81-1532.

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

Only parties who are affected by the transfer of ground water off overlying land for agricultural purposes or pursuant to a water remediation plan, as required under the Environmental Protection Act, may object to such transfer by the procedures outlined in subsection (2) of this section. Upon an objection to the transfer of ground water pursuant to subsection (2) of this section, a natural resources district shall conduct an investigation to determine whether the transfer of water complained of by the objector, which objectionable transfer must be for agricultural purposes or pursuant to a water remediation plan as required under the Environmental Protection Act, is consistent with the requirements of subsection (1) of this section that the transfer (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. In re

Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

The Legislature's purpose in enacting this section was to carve out two exceptions from Nebraska's common-law prohibition against transfers of water off overlying land: (1) for agricultural purposes and (2) pursuant to a remediation plan under the Environmental Protection Act. In re Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

According to the legislative history of LB 251, later codified as this section, the Legislature manifested an intent to validate agreements made before the bill's passage to transfer ground water off overlying land for agricultural purposes by failing to void such preexisting transfers. Springer v. Kuhns, 6 Neb. App. 115, 571 N.W.2d 323 (1997).

46-691.01 Transfer off overlying land for domestic use; limitations; liability.

Any person other than a public water supplier as defined in section 46-638 may transfer ground water off the overlying land for the purpose of domestic use of ground water required for human needs as it relates to health, fire control, and sanitation if (1) the location and use of the water well and any pipeline or other means of conveyance are authorized by easement or other adequate property interest on all land on which such water well and pipeline or other means of conveyance are located and (2) the capacity of the water well or series of water wells connected together for such purposes does not exceed fifty gallons per minute. Such person may be liable for damages for interference with the use of ground water by another person only if the withdrawal of ground water for such domestic use unreasonably causes harm to another person through the lowering of the water table or by reducing artesian pressure.

Source: Laws 2001, LB 472, § 1.

46-691.02 Transfer off overlying land for domestic use; applicability of section.

Section 46-691.01 applies to all such transfers and uses of ground water before, on, and after September 1, 2001.

Source: Laws 2001, LB 472, § 2.

46-691.03 Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.

(1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in addition to any permit required pursuant to section 46-252 or 46-735 or subdivision (1)(k) of section 46-739.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

- (a) Whether the proposed use is a beneficial use of ground water;
- (b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;
- (c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, transport, and use, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;
- (f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;
- (g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 46-713 to 46-719; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Source: Laws 2004, LB 962, § 97; Laws 2006, LB 1226, § 18.

Cross References

Open Meetings Act, see section 84-1407.

(i) REPUBLICAN RIVER BASIN

46-692 Repealed. Laws 2011, LB 1, § 1.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Cross References

Department of Natural Resources, successor to Department of Water Resources, see section 61-205.
Ground water quality monitoring, see Chapter 46, article 13.

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46-702.	Declaration of intent and purpose; legislative findings.
46-703.	Legislative findings.
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46-718.	Integrated management plan; hearings; implementation order; dispute; procedure.
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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.

46-702 Declaration of intent and purpose; legislative findings.

The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient to meet the reasonable needs of all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the reasonable and beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally and regionally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

The Legislature finds that given the impact of extended drought on areas of the state, the economic prosperity and future well-being of the state is advanced by providing economic assistance in the form of providing bonding authority for certain natural resources districts as defined in section 2-3226.01 and in the creation of the Water Resources Cash Fund to alleviate the adverse economic impact of regulatory decisions necessary for management, protection, and

conservation of limited water resources. The Legislature specifically finds that, consistent with the public ownership of water held by the state for the benefit of its citizens, any action by the Legislature, or through authority conferred by it to any agency or political subdivision, to provide economic assistance does not establish any precedent that the Legislature in sections 2-3226.01 and 61-218 or in the future must or should purchase water or provide compensation for any economic impact resulting from regulation necessary pursuant to the terms of Laws 2007, LB 701.

Source: Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4; Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1; Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20; Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656; Laws 1996, LB 108, § 8; Laws 2003, LB 619, § 10; R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42; Laws 2007, LB701, § 21.

A look-back provision of a natural resources district's rules governing land irrigation had a substantial relation to the general welfare, because it allowed the natural resources district to

ensure there is an adequate supply of ground water. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

46-703 Legislative findings.

The Legislature further finds:

(1) The management, conservation, and beneficial use of hydrologically connected ground water and surface water are essential to the continued economic prosperity and well-being of the state, including the present and future development of agriculture in the state;

(2) Hydrologically connected ground water and surface water may need to be managed differently from unconnected ground water and surface water in order to permit equity among water users and to optimize the beneficial use of interrelated ground water and surface water supplies;

(3) Natural resources districts already have significant legal authority to regulate activities which contribute to declines in ground water levels and to nonpoint source contamination of ground water and are the preferred entities to regulate, through ground water management areas, ground water related activities which are contributing to or are, in the reasonably foreseeable future, likely to contribute to conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(4) The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse affects on water supplies in another district or in an adjoining state. The Legislature intends and expects that each natural resources district within which water use is causing external impacts will accept responsibility for ground water management in accordance with the Nebraska Ground Water Management and Protection Act in the same manner and to the same extent as if the impacts were contained within that district;

(5) The Department of Natural Resources is responsible for regulation of surface water resources and local surface water project sponsors are responsible for much of the structured irrigation utilizing surface water supplies, and these entities should be responsible for regulation of surface water related activities which contribute to conflicts between ground water users and surface

water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(6) All involved natural resources districts, the department, and surface water project sponsors should cooperate and collaborate on the identification and implementation of management solutions to conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, and reaches; and

(7) An Interrelated Water Review Board is needed to resolve any conflicts between the department and the involved natural resources districts concerning the content, implementation, or enforcement of integrated management plans for fully appropriated and overappropriated river basins, subbasins, and reaches.

Source: Laws 1996, LB 108, § 11; Laws 2000, LB 900, § 189; R.S.Supp.,2002, § 46-656.05; Laws 2004, LB 962, § 43.

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

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 Environment and Energy 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; Laws 2021, LB148, § 55.

Operative date July 1, 2021.

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.

Ground water is owned by the public, and the only right held by an overlying landowner is in the use of the ground water. *Bamford v. Upper Republican Nat. Resources Dist.*, 245 Neb. 299, 512 N.W.2d 642 (1994).

Ground water, as defined in this section, is owned by the public, and the only right held by an overlying landowner is in the use of the ground water. *In re Application U-2*, 226 Neb. 594, 413 N.W.2d 290 (1987).

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.

46-709 Ground water management plan; required; contents.

Each district shall maintain a ground water management plan based upon the best available information and shall submit amendments to such plan to the Director of Natural Resources for review and approval.

The plan shall include, but not be limited to, the identification to the extent possible of:

- (1) Ground water supplies within the district including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;
- (2) Local recharge characteristics and rates from any sources, if available;
- (3) Average annual precipitation and the variations within the district;
- (4) Crop water needs within the district;
- (5) Current ground water data-collection programs;
- (6) Past, present, and potential ground water use within the district;
- (7) Ground water quality concerns within the district;
- (8) Proposed water conservation and supply augmentation programs for the district;
- (9) The availability of supplemental water supplies, including the opportunity for ground water recharge;
- (10) The opportunity to integrate and coordinate the use of water from different sources of supply;
- (11) Ground water management objectives, including a proposed ground water reservoir life goal for the district. For management plans adopted or revised after July 19, 1996, the ground water management objectives may include any proposed integrated management objectives for hydrologically connected ground water and surface water supplies but a management plan does not have to be revised prior to the adoption or implementation of an integrated management plan pursuant to section 46-718 or 46-719;
- (12) Existing subirrigation uses within the district;
- (13) The relative economic value of different uses of ground water proposed or existing within the district; and
- (14) The geographic and stratigraphic boundaries of any proposed management area.

If the expenses incurred by a district preparing or amending a ground water management plan exceed twenty-five percent of the district's current budget, the district may make application to the Nebraska Resources Development Fund for assistance.

Each district's ground water management plan shall also identify, to the extent possible, the levels and sources of ground water contamination within the district, ground water quality goals, long-term solutions necessary to prevent the levels of ground water contaminants from becoming too high and

to reduce high levels sufficiently to eliminate health hazards, and practices recommended to stabilize, reduce, and prevent the occurrence, increase, or spread of ground water contamination.

Source: Laws 1982, LB 375, § 3; Laws 1983, LB 378, § 3; Laws 1984, LB 1106, § 37; R.S.1943, (1993), § 46-673.01; Laws 1996, LB 108, § 18; Laws 2000, LB 900, § 191; Laws 2003, LB 619, § 12; R.S.Supp.,2003, § 46-656.12; Laws 2004, LB 962, § 49.

46-710 Ground water management plan preparation or modification; district; solicit and utilize information.

During preparation or modification of a ground water management plan, the district shall actively solicit public comments and opinions and shall utilize and draw upon existing research, data, studies, or any other information which has been compiled by or is in the possession of state or federal agencies, natural resources districts, or any other subdivision of the state. State agencies, districts, and other subdivisions shall furnish information or data upon the request of any district preparing or modifying such a plan. A district shall not be required to initiate new studies or data-collection efforts or to develop computer models in order to prepare or modify a plan.

Source: Laws 1982, LB 375, § 4; R.S.1943, (1993), § 46-673.02; Laws 1996, LB 108, § 19; R.S.1943, (1998), § 46-656.13; Laws 2004, LB 962, § 50.

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.

46-712 Management area; establishment; when; hearing; notice; procedure; district; powers and duties.

(1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 46-718, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-711. If necessary to determine whether a management area should be designated, the district may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area. Notice of the hearing shall be published as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3)(a) Within ninety days after the hearing, the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

(b) If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt one or more controls authorized by section 46-739 to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

(c) The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(4) Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297.

(6) If a ground water management area has been adopted by a district under this section that includes one or more controls authorized by subdivision (1)(f)

or (1)(m) of section 46-739, the district may request the Department of Natural Resources to conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water natural-flow appropriations in the area, river basin, subbasin, or reach of the management area, and the department may determine that the stay is in the public interest. The stay may include provisions for exceptions to be granted for beneficial uses as described in subsection (3) of section 46-714 or for a project that provides hydrological benefit to the area of the stay and may include provisions that the stay may be rescinded based on new or additional information that may become available.

Source: Laws 1982, LB 375, § 7; Laws 1986, LB 894, § 28; Laws 1991, LB 51, § 2; Laws 1993, LB 3, § 13; R.S.1943, (1993), § 46-673.05; Laws 1996, LB 108, § 25; Laws 1997, LB 188, § 1; Laws 2000, LB 900, § 195; R.S.Supp.,2002, § 46-656.19; Laws 2004, LB 962, § 52; Laws 2006, LB 1226, § 22.

46-713 Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations; reevaluation; hearing; notice.

(1)(a) By January 1 of each year beginning in 2006 and except as otherwise provided in this section and section 46-720, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new ground water uses in each of the state's river basins and shall issue a report that describes the results of the evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more subbasins or reaches. A river basin, subbasin, or reach for which an integrated management plan has been or is being developed pursuant to sections 46-715 to 46-717 or pursuant to section 46-719 shall not be evaluated unless it is being reevaluated as provided in subsection (2) of this section. For each river basin, subbasin, or reach evaluated, the report shall describe (i) the nature and extent of use of both surface water and ground water in each river basin, subbasin, or reach, (ii) the geographic area within which the department preliminarily considers surface water and ground water to be hydrologically connected and the criteria used for that determination, and (iii) the extent to which the then-current uses affect available near-term and long-term water supplies. River basins, subbasins, and reaches designated as overappropriated in accordance with subsection (4) of this section shall not be evaluated by the department. The department is not required to perform an annual evaluation for a river basin, subbasin, or reach during the four years following a status change in such river basin, subbasin, or reach under subsection (12) of section 46-714.

(b) Based on the information reviewed in the evaluation process, the department shall arrive at a preliminary conclusion for each river basin, subbasin, and reach evaluated as to whether such river basin, subbasin, or reach presently is fully appropriated without the initiation of additional uses. The department shall also determine if and how such preliminary conclusion would change if no additional legal constraints were imposed on future development of hydrologically connected surface water and ground water and reasonable projections are made about the extent and location of future development in such river basin, subbasin, or reach.

(c) In addition to the conclusion about whether a river basin, subbasin, or reach is fully appropriated, the department shall include in the report, for informational purposes only, a summary of relevant data provided by any interested party concerning the social, economic, and environmental impacts of additional hydrologically connected surface water and ground water uses on resources that are dependent on streamflow or ground water levels but are not protected by appropriations or regulations.

(d) In preparing the report, the department shall rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department shall provide sufficient documentation to allow these data, information, methodologies, and conclusions to be independently replicated and assessed. Upon request by the department, state agencies, natural resources districts, irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, municipalities, and other water users and stakeholders shall provide relevant data and information in their possession. The Department of Natural Resources shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this section.

(2)(a) The department shall complete a reevaluation of a river basin, subbasin, or reach for which an integrated management plan has been or is being prepared if the department has reason to believe that a reevaluation might lead to a different determination about whether such river basin, subbasin, or reach is fully appropriated or overappropriated. A decision to reevaluate may be reached by the department on its own or in response to a petition filed with the department by any interested person. To be considered sufficient to justify a reevaluation, a petition shall be accompanied by supporting information showing that (i) new scientific data or other information relevant to the determination of whether the river basin, subbasin, or reach is fully appropriated or overappropriated has become available since the last evaluation of such river basin, subbasin, or reach, (ii) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (iii) the department erred in its interpretation or application of the information available when the river basin, subbasin, or reach was last evaluated. If a petition determined by the department to be sufficient is filed before July 1 of any year, the reevaluation of the river basin, subbasin, or reach involved shall be included in the next annual report prepared in accordance with subsection (1) of this section. If any such petition is filed on or after July 1 of any year, the department may defer the reevaluation of the river basin, subbasin, or reach involved until the second annual report after such filing.

(b) If the reevaluation results in a different determination by the department, then (i) the department shall notify, by certified mail, the affected natural resources districts and any irrigation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach of the preliminary change in the determination and (ii) the department shall hold one or more public hearings not more than ninety days after the publication of the notice required in subdivision (b)(i) of this subsection. Notice of the hearings shall be provided in the same manner as the notice required in subsection (1) of section 46-714. Any interested person may appear at the hearing and present written or

oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach.

(c) Within thirty days after the final hearing under subdivision (b) of this subsection, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach.

(3) A river basin, subbasin, or reach shall be deemed fully appropriated if the department determines based upon its evaluation conducted pursuant to subsection (1) of this section and information presented at the hearing pursuant to subsection (4) of section 46-714 that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural-flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(4)(a) A river basin, subbasin, or reach shall be deemed overappropriated if, on July 16, 2004, the river basin, subbasin, or reach is subject to an interstate cooperative agreement among three or more states and if, prior to such date, the department has declared a moratorium on the issuance of new surface water appropriations in such river basin, subbasin, or reach and has requested each natural resources district with jurisdiction in the affected area in such river basin, subbasin, or reach either (i) to close or to continue in effect a previously adopted closure of all or part of such river basin, subbasin, or reach to the issuance of additional water well permits in accordance with subdivision (1)(k) of section 46-656.25 as such section existed prior to July 16, 2004, or (ii) to temporarily suspend or to continue in effect a temporary suspension, previously adopted pursuant to section 46-656.28 as such section existed prior to July 16, 2004, on the drilling of new water wells in all or part of such river basin, subbasin, or reach.

(b) Within sixty days after July 16, 2004, the department shall designate which river basins, subbasins, or reaches are overappropriated. The designation shall include a description of the geographic area within which the department has determined that surface water and ground water are hydrologically connected and the criteria used to make such determination.

Source: Laws 2004, LB 962, § 53; Laws 2006, LB 1226, § 23; Laws 2009, LB54, § 1; Laws 2009, LB483, § 3.

As an exception to the requirement that a litigant assert its own rights and interests to have standing, a natural resources district has standing under this section to challenge a state action that requires it to spend the public funds that it is charged with raising and controlling. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Because the director of the Department of Natural Resources cannot resolve a challenge to a senior appropriator's call before the Department of Natural Resources issues its annual report on January 1, the department cannot base its annual evaluations

upon a senior appropriator's call. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Generally, to be an "interested person" under subsection (2) of this section, a litigant challenging a fully appropriated determination by the Department of Natural Resources must be asserting its own rights and interests, not those of a third party, and must demonstrate an injury in fact sufficient to confer common-law standing. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

Subsection (3)(a) of this section permits the Department of Natural Resources to designate a river basin or subpart as fully appropriated by focusing solely on whether surface water appropriations are sustainable. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' promulgated methodologies under this section for determining whether a river basin or subpart is fully appropriated must be followed and applied in a consistent manner. Additionally, under subsection (1)(d) of this section, an independent party must be able to replicate and assess its methodologies and conclusions. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations do not permit an independent party to replicate or assess the department's findings or methodologies, as required under sub-

section (1)(d) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations promulgated under this section do not permit the department to determine that a river basin is fully appropriated by comparing a senior appropriation right to the streamflow values at a specific diversion point or streamflow gauge. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

To petition for a contested hearing challenging a fully appropriated determination of the Department of Natural Resources for a river basin, the challenger must have standing as an interested person under subsection (2) of this section. *Middle Niobrara NRD v. Department of Nat. Resources*, 281 Neb. 634, 799 N.W.2d 305 (2011).

46-714 River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; natural resources district; duties.

(1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Such notice to natural resources districts shall be by certified mail. The notice shall be addressed to the manager of the natural resources district or his or her designee and shall include the signature of the Director of Natural Resources. Immediately upon receipt of such notice by the natural resources district, there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

(2) If the department preliminarily determines a river basin, subbasin, or reach to be fully appropriated and has identified the existence of hydrologically connected surface water and ground water in such river basin, subbasin, or reach, stays shall also be imposed:

(a) On the construction of any new water well in the area covered by the determination unless a permit with conditions imposed by the natural resources district has been issued prior to the determination. Such conditions shall meet the objectives of subsection (4) of section 46-715 and may include, but are not limited to, conditions in accordance with subsection (6) of section 46-739. Any well constructed pursuant to such permit shall be completed in accordance with section 46-738; and

(b) On the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated.

Such additional stays shall begin ten days after the first publication, in a newspaper of statewide circulation, of the notice of the preliminary determination that the river basin, subbasin, or reach is fully appropriated.

(3) Exceptions to the stays imposed pursuant to subsection (1), (2), (8), or (9) of this section shall exist for (a) test holes, (b) dewatering wells with an intended use of one year or less, (c) monitoring wells, (d) wells constructed pursuant to a ground water remediation plan under the Environmental Protection Act, (e) water wells designed and constructed to pump fifty gallons per minute or less, except that no two or more water wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute, (f) water wells for range livestock, (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety, (h) water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace or, if applicable, the historic consumptive use of the surface water use it is to replace, (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred, (j) water wells and increases in ground water irrigated acres for which a variance is granted by the applicable natural resources district for good cause shown, (k) subject to any conditions imposed by the applicable natural resources district, to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that were permitted prior to the effective date of the determination made in subsection (1) of this section and completed in accordance with section 46-738 but were not used for irrigation prior to that effective date, (l) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that are constructed after the effective date of the stay in accordance with a permit granted by that natural resources district prior to the effective date of the stay, (m) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of section 46-233, (n) surface water uses and increases in surface water irrigated acres for which a variance is granted by the department for good cause shown, and (o) water wells for which permits have been approved by the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act prior to the effective date of the stay.

(4) Except as otherwise provided in this section, any stay imposed pursuant to subsections (1) and (2) of this section shall remain in effect for the affected river basin, subbasin, or reach until the department has made a final determination regarding whether the river basin, subbasin, or reach is fully appropriated and, if the department's final determination is that the river basin, subbasin, or reach is fully appropriated, shall remain in effect as provided in subsection (11) of this section. Within the time period between the dates of the preliminary and final determinations, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or

reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources districts. The department shall also hold one or more public hearings not more than ninety days after the first publication of the notice required by subsection (1) of this section. Notice of the hearings shall be provided in the same manner as the notice required by such subsection. Any interested person may appear at such hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether the stays on new uses should be terminated.

(5) Within thirty days after the final hearing under subsection (4) of this section, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach. If the final determination is that the river basin, subbasin, or reach is fully appropriated, the department, at the same time, shall (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the department considers surface water and ground water to be hydrologically connected in the river basin, subbasin, or reach and describe the methods and criteria used in making that determination. The department shall provide notice of its decision to continue or terminate the stays in the same manner as the notice required by subsection (1) of this section.

(6) Within ninety days after a final determination by the department that a river basin, subbasin, or reach is fully appropriated, an affected natural resources district may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated. Notice of the hearings shall be published as provided in section 46-743.

(7) Within forty-five days after a natural resources district's final hearing pursuant to subsection (6) of this section, the natural resources district shall decide (a) whether to terminate the stay on new water wells in all or part of the natural resources district subject to the stay and (b) whether to terminate the stay on increases in ground water irrigated acres. If the natural resources district decides not to terminate the stay on new water wells in any geographic area, it shall also decide whether to exempt from such stay the construction of water wells for which permits were issued prior to the issuance of the stay but for which construction had not begun prior to issuance of the stay. If construction of water wells for which permits were issued prior to the stay 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.

(8) Whenever the department designates a river basin, subbasin, or reach as overappropriated, each previously declared moratorium on the issuance of new surface water appropriations in the river basin, subbasin, or reach shall continue in effect. The department shall also provide prompt notice of such designation to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Immediately upon receipt of such notice by a natural resources district, there shall be a stay on the issuance of new water well construction permits in

any portion of such natural resources district that is within the hydrologically connected area designated by the department. The department shall also notify the public of its designation of such river basin, subbasin, or reach as overappropriated and of the geographic area involved in such designation. Such notice shall be published once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspapers as are deemed appropriate by the department to provide general notice in the river basin, subbasin, or reach.

(9) Beginning ten days after the first publication of notice under subsection (8) of this section in a newspaper of statewide circulation, there shall also be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to such date and if no permit for construction of the water well has been issued previously by either the department or the natural resources district, (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated, and (c) on the use of an existing surface water appropriation to increase the number of acres historically irrigated in the affected area.

(10) Within ninety days after a designation by the department of a river basin, subbasin, or reach as overappropriated, a natural resources district that encompasses any of the hydrologically connected area designated by the department may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area, (b) the issuance of new water well construction permits in such area, or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for such purpose shall be provided pursuant to section 46-743. Prior to the scheduling of a natural resources district hearing on the question of whether to terminate any such stay, the department and the affected natural resources district shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources district.

(11) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (7), or (10) of this section, (b) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the department and the affected natural resources districts and has taken effect, (c) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the Interrelated Water Review Board and has taken effect, (d) the department has completed a reevaluation pursuant to subsection (2) of section 46-713 and has determined that the affected river basin, subbasin, or reach is not fully appropriated or overappropriated, or (e) the stay expires pursuant to this subsection. Such stay may be imposed initially for not more than three years following the department's designation of the river basin, subbasin, or reach as overappropriated or the department's final determination that a river basin, subbasin, or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the department and the affected natural resources district for not more than two additional years if necessary to allow the development, adop-

tion, and implementation of an integrated management plan pursuant to sections 46-715 to 46-719.

(12)(a) For purposes of this subsection, (i) a status change occurs when a preliminary or final determination that a river basin, subbasin, or reach is fully appropriated is reversed by the department or by judicial determination and such river basin, subbasin, or reach is determined not to be fully appropriated and (ii) the hydrologically connected area means the geographic area within which the department considers surface water and ground water in such river basin, subbasin, or reach to be hydrologically connected.

(b) If a status change occurs, any stays previously in force by the department or affected natural resources districts shall remain in force until the stays imposed under this subsection are in place and the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in the river basin, subbasin, or reach. The department shall also provide prompt notice of the status change in accordance with subsection (1) of this section. Immediately upon receipt of the notice by the affected natural resources district, there shall be stays imposed as set forth in subsections (1) and (2) of this section, subject to the exceptions set forth in subsection (3) of this section. The stays imposed pursuant to this subsection shall remain in effect within each affected natural resources district until such district adopts rules and regulations in accordance with subdivision (c), (d), or (e) of this subsection.

(c) Upon receipt of notice of a status change, each affected natural resources district shall adopt rules and regulations within one hundred twenty days after receipt of such notice for the prioritization and granting of water well permits within the hydrologically connected area for the four-year period following the status change. Nothing in this subsection shall be construed to supersede the authority provided to natural resources districts under subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m) of section 46-739.

(d) The rules and regulations adopted by each affected natural resources district in accordance with subdivision (c) of this subsection shall (i) allow a limited number of total new ground water irrigated acres annually, (ii) be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination, (iii) be for a term of not less than four years, and (iv) limit the number of new permits so that total new ground water irrigated acres do not exceed the number set in the rules and regulations. The department shall approve the proposed new number of ground water irrigated acres within sixty days after approval by the natural resources district if such district meets the conditions set forth in subdivision (d)(ii) of this subsection, based on the most recent basin determination.

(e) If the proposed new number of acres is not approved by the department within the applicable time period as provided in subdivision (d) of this subsection, the affected natural resources districts shall adopt rules and regulations that allow water well permits to be issued that will result in no more than two thousand five hundred irrigated acres or that will result in an increase of not more than twenty percent of all historically irrigated acres within the hydrologically connected area of each natural resources district within the affected river basin, subbasin, or reach, whichever is less, for each calendar year of the four-year period following the date of the determination described in this subsection. Each affected natural resources district may, after the initial four-year period

has expired, annually determine whether water well permit limitations should continue and may enforce such limitations.

(f) During the four-year period following the status change, the department shall ensure that any new appropriation granted will not cause the basin, subbasin, or reach to be fully appropriated based on the most recent basin determination. The department, pursuant to its rules and regulations, shall not issue new natural flow surface water appropriations for irrigation, within the river basin, subbasin, or reach affected by the status change, that will result in a net increase of more than eight hundred thirty-four irrigated acres in each natural resources district during each calendar year of the four-year period following the date of the determination described in this subsection.

Source: Laws 2004, LB 962, § 54; Laws 2006, LB 1226, § 24; Laws 2009, LB54, § 2; Laws 2009, LB483, § 4.

Cross References

Environmental Protection Act, see section 81-1532.

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

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.

46-716 Integrated management plan; surface water controls.

(1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department of Natural Resources are: (a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually; (b) the prohibition or limitation of additional surface water appropriations; (c) requirements for surface water appropriators to apply or utilize reasonable conservation measures consistent with good husbandry and other requirements of section 46-231 and consistent with reasonable reliance by other surface water or ground water users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use which are consistent with the intent of section 46-715 and the requirements of section 46-231.

(2) If during the development of the integrated management plan the department determines that surface water appropriators should be required to apply or utilize conservation measures or that other reasonable restrictions on surface water use need to be imposed, the department's portion of the integrated management plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions.

Source: Laws 2004, LB 962, § 56.

46-717 Integrated management plan; scientific data and other information; department; natural resources district; duties.

(1) In developing an integrated management plan, the Department of Natural Resources and the affected natural resources districts shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the applicable scientific data and other information relied upon by the department in preparing the annual report required by section 46-713 and to other types of data and information that may

be deemed appropriate by the department. The department, after seeking input from the affected natural resources districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The natural resources districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this section. Existing research, data, studies, or any other relevant information which has been compiled by or is in possession of other state or federal agencies, other natural resources districts, and other political subdivisions within the State of Nebraska shall be utilized. State agencies and political subdivisions shall furnish information or data upon request of the department or any affected natural resources district. Neither the department nor the natural resources districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models developed within the limits of available funding if the additional information is desired by the department or the affected natural resources districts.

(2) During preparation of an integrated management plan for a fully appropriated river basin, subbasin, or reach or of an integrated management plan under subdivision (1)(b) of section 46-715, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or by the affected natural resources districts. They shall also actively solicit public comments and opinions through public meetings and other means.

Source: Laws 2004, LB 962, § 57; Laws 2010, LB764, § 2.

46-718 Integrated management plan; hearings; implementation order; dispute; procedure.

(1) If the Department of Natural Resources and the affected natural resources districts preparing an integrated management plan reach agreement on (a) the proposed goals and objectives of the plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, they shall schedule one or more public hearings to take testimony on the proposed integrated management plan and the proposed controls. Such hearings shall be held within forty-five days after reaching agreement and within or in reasonable proximity to the area to be affected by implementation of the integrated management plan. Notice of such hearings shall be published as provided in section 46-743. The costs of publishing the notice shall be shared between the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(2) Within sixty days after the final hearing under this section, the department and the affected natural resources districts shall jointly decide whether to implement the plan proposed, with or without modifications, and whether to adopt and implement the surface water and ground water controls and incen-

tive programs proposed in the plan. If the department and the natural resources districts agree to implement the plan and to adopt and implement the proposed controls, the natural resources districts shall by order designate a ground water management area for integrated management or, if the geographic area subject to the integrated management plan is already in a ground water management area, the order shall designate an integrated management subarea for that area. The order shall include a geographic and stratigraphic definition of the ground water management area or integrated management subarea and shall adopt the controls in the integrated management plan that are authorized for adoption by the natural resources district pursuant to section 46-739. The department shall by order adopt the controls in the integrated management plan that are authorized for adoption by the department pursuant to section 46-716. Neither the controls adopted by the district nor those adopted by the department shall include controls substantially different from those set forth in the notice of hearing. The area designated as a ground water management area or an integrated management subarea by the natural resources district shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan. The department and the natural resources district shall each cause a copy of its order to be published in the manner provided in section 46-744.

(3) If at any time during the development of a basin-wide plan or an integrated management plan either the department or the affected natural resources districts conclude that the parties will be unable to reach a timely agreement on the basin-wide plan or on (a) the goals and objectives of the integrated management plan for the affected river basin, subbasin, or reach, (b) the geographic area to be subject to controls, or (c) the surface water or ground water controls or any incentive programs to be proposed for adoption and implementation in the affected river basin, subbasin, or reach, the Governor shall be notified and the dispute shall be submitted to the Interrelated Water Review Board as provided in subsection (2) of section 46-719.

Source: Laws 2004, LB 962, § 58.

46-719 Interrelated Water Review Board; created; members; powers and duties.

(1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

(b) Not more than two members of the board shall reside in the geographic area involved in the dispute. A person is not eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to the person, a member of his or her immediate family, or

a business with which the person is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the Open Meetings Act.

(c) For purposes of subsections (2) and (3) of this section, action may be taken by a vote of three of the board's five members. For purposes of subsections (4) and (5) of this section, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 46-715 to 46-718, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 46-743. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 46-715, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent with subsection (4) of section 46-715. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of

the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 46-744.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 46-718 or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground water controls. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party

desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Source: Laws 2004, LB 962, § 59; Laws 2006, LB 1226, § 26; Laws 2009, LB54, § 4.

Cross References

Open Meetings Act, see section 84-1407.

46-720 Proceedings under prior law; transitional provisions.

(1) The Legislature finds that, prior to July 16, 2004, actions were taken by the Department of Natural Resources and by one or more natural resources districts pursuant to section 46-656.28, as such section existed immediately prior to such date, for the purpose of addressing circumstances that are, after such date, to be addressed in accordance with sections 46-713 to 46-719. It is the intent of the Legislature that actions taken pursuant to section 46-656.28, as such section existed immediately prior to July 16, 2004, should not be negated and that transition from the authorities and responsibilities granted by such section to those granted by sections 46-713 to 46-719 should occur in as efficient a manner as possible. Such transition shall be therefor governed by subsections (2) through (5) of this section, and all references in such subsections to section 46-656.28 shall be construed to mean section 46-656.28 as such section existed immediately prior to July 16, 2004.

(2) If, prior to July 16, 2004, (a) a natural resources district requested pursuant to subsection (1) of section 46-656.28 that affected appropriators, affected surface water project sponsors, and the department consult and that studies and a hearing be held but (b) the Director of Natural Resources has not made a preliminary determination relative to that request pursuant to subsection (2) of section 46-656.28, no further action on the district's request shall be required of the department. If under the same circumstances a temporary suspension in the drilling of certain water wells has been imposed by the district pursuant to subsection (16) of section 46-656.28 and remains in effect immediately prior to July 16, 2004, such temporary suspension shall remain in effect for thirty days after the department issues its first annual report under section 46-713, except that (i) such temporary suspension shall not apply to water wells for which a permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and (ii) to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a river basin, subbasin, or reach designated as overappropriated by the department, such temporary suspension shall remain in effect only until it is superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the department to have ground water hydrologically connected to the surface water of a fully appropriated river basin, subbasin, or reach, such temporary suspension shall be superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(3)(a) If prior to July 16, 2004, (i) the director has made a preliminary determination pursuant to subsection (2) of section 46-656.28 that there is reason to believe that the use of hydrologically connected ground water and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any conflict, dispute, or difficulty listed in such subsection, (ii) the director has not made a determination pursuant to subsection (4) of section 46-656.28 that a joint action plan should not be prepared, and (iii) preparation of a joint action plan pursuant to subsections (5) through (9) of such section has not been completed, the geographic area involved shall become subject to sections 46-713 to 46-719 on July 16, 2004, and the department need not evaluate such geographic area in its first annual report issued pursuant to section 46-713.

(b) For purposes of this subsection and section 46-714 and except as otherwise provided in this section, (i) July 16, 2004, shall result in the imposition in any geographic area subject to this subsection of the stays required by subsections (1) and (2) of section 46-714, (ii) such stays shall be imposed in the manner required by such section, and (iii) July 16, 2004, shall be treated as if it were the date of a departmental preliminary determination pursuant to section 46-713 that such area is a geographic area within which ground water and surface water of a fully appropriated river basin, subbasin, or reach are hydrologically connected. Notwithstanding the other provisions of this subsection, if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area and (B) the stays on construction of certain new water wells shall not apply to a water well constructed in accordance with the terms of a water well construction permit approved by the district prior to July 16, 2004, unless such well was subject to the district's temporary suspension. If, prior to July 16, 2004, the director has held a hearing on a report issued pursuant to subsection (3) of section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no departmental hearing shall be required pursuant to subsection (4) of section 46-714 before a final determination is made about whether the river basin, subbasin, or reach involved is fully appropriated. If, prior to July 16, 2004, the director has determined pursuant to subsection (4) of section 46-656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 46-714 that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required. If, after July 16, 2004, the department determines that all or part of the area subject to this subsection is in an overappropriated river basin, subbasin, or reach, that portion of the area shall thereafter be subject to the provisions of the Nebraska Ground Water Management and Protection Act applicable to an overappropriated river basin, subbasin, or reach and stays that have previously taken effect in accordance with this subsection shall continue in effect as stays for an overappropriated river basin, subbasin, or reach without additional action or publication of notice by the department. Any temporary suspension in the drilling of certain water wells that has been

imposed in the geographic area involved by a natural resources district pursuant to subsection (16) of section 46-656.28 prior to July 16, 2004, shall remain in effect until superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(4) If, prior to July 16, 2004, preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of section 46-656.28 but the plan has not yet been adopted pursuant to subsection (11) of such section, the department need not evaluate the affected geographic area in its first annual report issued pursuant to section 46-713. The department and the affected natural resources district shall review the completed joint action plan for its compliance with sections 46-715 to 46-717. If the joint action plan is determined to be in compliance with sections 46-715 to 46-717 or if agreement is reached on the revisions necessary to bring it into such compliance, the department and the district shall adopt the plan and implement the controls as provided in section 46-718. If the joint action plan is determined not to be in compliance with sections 46-715 to 46-717 and agreement on the proposed plan or the proposed controls cannot be reached pursuant to section 46-718, section 46-719 shall apply. Except to the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of certain water wells imposed in the affected geographic area by a natural resources district pursuant to subsection (16) of section 46-656.28 shall remain in effect until (a) the department and the affected district have jointly decided to implement the plan, with or without modifications, and controls have been adopted and taken effect or (b) the Interrelated Water Review Board, pursuant to section 46-719, has adopted an integrated management plan for the affected river basin, subbasin, or reach and the controls adopted by the board have taken effect. To the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of water wells shall be superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714.

(5) If, before July 16, 2004, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of section 46-656.28 and is in effect immediately prior to such date, the department need not evaluate the geographic area subject to the plan in the department's first annual report issued pursuant to section 46-713. For purposes of the Nebraska Ground Water Management and Protection Act, (a) the plan adopted shall be considered an integrated management plan adopted pursuant to section 46-718, (b) the management area designated shall be considered an integrated management area or subarea designated pursuant to section 46-718, and (c) the controls adopted shall be considered controls adopted pursuant to section 46-718 and shall remain in effect until amended or repealed pursuant to section 46-718 or 46-719.

Source: Laws 2004, LB 962, § 60; Laws 2009, LB483, § 5.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

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.

46-727 Management area; contamination; action plan; contents.

An action plan filed by a district pursuant to section 46-726 shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the controls authorized by section 46-739.

Source: Laws 1986, LB 894, § 8; Laws 1991, LB 51, § 12; R.S.1943, (1993), § 46-674.09; Laws 1996, LB 108, § 47; R.S.1943, (1998), § 46-656.41; Laws 2004, LB 962, § 67.

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 deter-

mines 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.

46-734 Contamination; Environmental Quality Council; adopt rules and regulations.

The Environmental Quality Council shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties under sections 46-721 to 46-733.

Source: Laws 1986, LB 894, § 15; Laws 1993, LB 3, § 26; R.S.1943, (1993), § 46-674.16; Laws 1996, LB 108, § 54; R.S.1943, (1998), § 46-656.48; Laws 2004, LB 962, § 74.

Cross References

Administrative Procedure Act, see section 84-920.

46-735 Construct water well in a management area; permit required; application; form; fee; contents; late permit application; fee.

(1) Any person who intends to construct a water well in a management area in this state on land which he or she owns or controls shall, before commencing construction, apply with the district in which the water well will be located for a permit on forms provided by the district, except that (a) no permit shall be required for test holes or dewatering wells with an intended use of ninety days or less, (b) no permit shall be required for a single water well designed and constructed to pump fifty gallons per minute or less, and (c) a district may provide by rule and regulation that a permit need not be obtained for water wells defined by the district to be replacement water wells. A district may require a permit for a water well designed and constructed to pump fifty gallons per minute or less if such water well is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. A district may by rule and regulation require that a permit be obtained for each water well or for one or more categories of water wells designed and constructed to pump fifty gallons per minute or less, other than a water source required for human needs as it relates to health, fire control, and sanitation or used to water range livestock, in ground water management areas in which regulations have been imposed to control declining ground water levels. Forms shall be made available at each district in which a management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) A person shall apply for a permit under this section before he or she modifies a water well for which a permit was not required under subsection (1) of this section into one for which a permit would otherwise be required under such subsection.

(3) The application shall be accompanied by a fifty-dollar filing fee payable to the district and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed water well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed water well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, (h) the registration number of the water well being replaced if applicable, and (i) such other information as the district requires.

(4) Any person who has failed or in the future fails to obtain a permit required by subsection (1) or (2) of this section shall make application for a late permit on forms provided by the district.

(5) The application for a late permit shall be accompanied by a two-hundred-fifty-dollar fee payable to the district and shall contain the same information required in subsection (3) of this section.

Source: Laws 1975, LB 577, § 4; Laws 1980, LB 643, § 10; Laws 1981, LB 325, § 2; Laws 1982, LB 375, § 16; Laws 1983, LB 23, § 3; Laws 1984, LB 1071, § 3; Laws 1986, LB 894, § 23; Laws 1993, LB 131, § 25; Laws 1994, LB 981, § 8; Laws 1995, LB 145, § 2; R.S.Supp.,1994, § 46-659; Laws 1996, LB 108, § 35; Laws 1998, LB 1161, § 13; Laws 1999, LB 870, § 1; Laws 2003, LB 34, § 1; R.S.Supp.,2003, § 46-656.29; Laws 2004, LB 962, § 75.

46-736 Permit; when denied; corrections allowed; fees nonrefundable.

An application for a permit or late permit for a water well in a management area shall be denied only if the district in which the water well is to be located finds (1) that the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the district, (2) that the proposed use would not be a beneficial use of water, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.

If the district finds that the application is incomplete or defective, it shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached or denied not later than thirty days after receipt by the district of a complete and properly prepared application.

A permit issued shall specify all regulations and controls adopted by a district relevant to the construction or utilization of the proposed water well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The district shall transmit one copy of each permit issued to the Director of Natural Resources.

Source: Laws 1975, LB 577, § 5; Laws 1980, LB 643, § 11; Laws 1982, LB 375, § 17; Laws 1983, LB 23, § 4; Laws 1984, LB 1071, § 4; Laws 1993, LB 131, § 26; R.S.1943, (1993), § 46-660; Laws 1996, LB 108, § 36; Laws 2000, LB 900, § 198; Laws 2003, LB 35, § 1; R.S.Supp.,2003, § 46-656.30; Laws 2004, LB 962, § 76.

46-737 Issuance of permit; no right to violate rules, regulations, or controls.

The issuance by the district of a permit pursuant to section 46-736 or registration of a water well by the Director of Natural Resources pursuant to section 46-602 shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of the water well or to violate any rule, regulation, or control properly adopted after such date.

Source: Laws 1975, LB 577, § 6; Laws 1983, LB 23, § 5; Laws 1984, LB 1071, § 5; Laws 1993, LB 131, § 27; R.S.1943, (1993), § 46-661; Laws 1996, LB 108, § 37; Laws 2000, LB 900, § 199; R.S.Supp.,2002, § 46-656.31; Laws 2004, LB 962, § 77.

46-738 Issuance of permit; commence construction and complete water well within one year; failure; effect.

When any permit is approved pursuant to section 46-736, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the water well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant fails to complete the project under the terms of the permit, the district may withdraw the permit.

Source: Laws 1975, LB 577, § 7; Laws 1983, LB 23, § 6; Laws 1993, LB 131, § 28; R.S.1943, (1993), § 46-662; Laws 1996, LB 108, § 38; R.S.1943, (1998), § 46-656.32; Laws 2004, LB 962, § 78.

46-739 Management area; controls authorized; procedure.

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

- (a) It may allocate the amount of ground water that may be withdrawn by ground water users;
- (b) It may adopt a system of rotation for use of ground water;
- (c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;
- (d) It may require the installation of devices for measuring ground water withdrawals from water wells;
- (e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-740;
- (f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;
- (g) It may require the use of best management practices;
- (h) It may require the analysis of water or deep soils for fertilizer and chemical content;
- (i) It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (i) transfers of ground water off the land where the water is withdrawn, (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section, (iii) transfers of certified water uses or certified irrigated acres between landowners or other persons, or (iv) transfers of certified water uses or certified irrigated acres between parcels or tracts under the control of a common landowner or other person. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare. Approval of any transfer of certified water uses or certified irrigated acres under subdivision (1)(k)(iii) or (iv) of this section shall further be subject to the district having complied with the requirements of section 46-739.01;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

(n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-740 and 46-741, 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 will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider

testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

(c) For a management area in a river basin or part of a river basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-712, regarding the controls before implementing them.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established and shall further condition participation upon satisfaction of the requirements of section 46-739.01.

Source: Laws 1975, LB 577, § 11; Laws 1978, LB 217, § 2; Laws 1979, LB 26, § 4; Laws 1980, LB 643, § 13; Laws 1981, LB 146, § 9; Laws 1982, LB 375, § 19; Laws 1983, LB 23, § 7; Laws 1983, LB 506, § 1; Laws 1984, LB 1071, § 8; Laws 1986, LB 894, § 25; Laws 1993, LB 131, § 30; R.S.1943, (1993), § 46-666; Laws 1996, LB 108, § 31; Laws 1997, LB 877, § 6; Laws 2000, LB 900, § 196; Laws 2001, LB 135, § 2; Laws 2001, LB 667, § 9; R.S.Supp.,2002, § 46-656.25; Laws 2004, LB 962, § 79; Laws 2006, LB 1226, § 27; Laws 2009, LB477, § 6.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

A look-back provision of a natural resources district's rules governing land irrigation established a baseline number of acres historically irrigated within the natural resources district and was in accord with the authority provided under the Nebraska

Ground Water Management and Protection Act to limit the expansion of irrigated acres. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

46-739.01 District; approval of certain transfers or program participation; report of title required; form; written consent of lienholder; rights of lienholder.

(1) Notwithstanding any other provision of law, no district shall approve a transfer of certified water uses or certified irrigated acres or allow a ground water user or landowner to participate in a financial or other incentive program established pursuant to subsection (8) of section 46-739 unless the person seeking such transfer or participation in such program has submitted to the district a report of title issued by an attorney or a registered abstractor, on a form prescribed by the district, reflecting (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and (b) the existence of all liens, evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and the name and address of each such lienholder, if any. If the report of title reflects the existence of any lien evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, written

consent to such transfer or participation in such program shall be obtained from each such lienholder. The district may assess a fee against the person seeking such transfer or participation in such program to recoup its costs in reviewing the report of title. This subsection does not apply to a transfer of certified water uses or certified irrigated acres resulting from: A one-time transfer of four acres or less; participation in a financial or other incentive program that involves the transfer, purchase, or retirement of four acres or less; or a transfer that involves one landowner on a single tract of land in which there is no reduction or increase in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency.

(2) Approval of a transfer of certified water uses or certified irrigated acres or authorization of a ground water user or landowner to participate in such financial or other incentive program by a district shall not affect the rights of any lienholder who is not reflected in the report of title and from whom the required consent was not obtained. Such a lienholder may bring an action against the person seeking such transfer or participation in such program for damages or injunctive or other relief for any injury done to the lienholder's interest in land or use of ground water resulting from such transfer or participation.

(3) This section does not limit the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 2009, LB477, § 7; Laws 2010, LB862, § 3.

46-739.02 Transfer of right to use ground water; recording; recovery of cost; manner.

An instrument of transfer of the right to use ground water shall be recorded by a natural resources district with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a transfer of certified water uses or certified irrigated acres occurred, in any case in which a transfer of certified water uses or certified irrigated acres has been approved by such district. The instrument of transfer of the right to use ground water shall include a description of the real estate to and from which the certified water uses or certified irrigated acres were transferred, the nature of the transfer, and the date on which the transfer occurred. The district may recover the cost of filing an instrument of transfer of the right to use ground water from the person seeking the transfer. The instrument of transfer of the right to use ground water shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

Source: Laws 2009, LB477, § 8.

46-739.03 Natural resources district determination; effect.

The determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established under section 46-740.

Source: Laws 2009, LB477, § 9.

46-740 Ground water allocation; limitations and conditions.

(1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be

allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-739. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) Except as permitted pursuant to subsections (4) through (6) of section 46-739, if annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

(3) Unless an integrated management plan, a rule, or an order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a municipality, within an area determined by the Department of Natural Resources to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources district;

(b)(i) For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. Water for commercial and industrial uses may be limited as specified in subdivision (b)(iii) of this subsection.

(ii) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west, and shall not be less than two hundred gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than two hundred fifty gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.

(iii) Prior to January 1, 2026, any new or expanded single commercial or single industrial development served by any municipality within the fully appropriated or overappropriated area which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715;

(c) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations outlined in subdivisions (3)(a) and (b) of this section. Any permanent reduction in consumptive use of water associated with municipal growth,

including governmental, industrial, and commercial growth, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such municipality is located; and

(d) To qualify for the exemption specified in subsection (3) of this section, any city of the metropolitan class, city of the primary class, city of the first class, or city of the second class shall file a conservation plan with the natural resources district, if required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify for such exemption.

(4) On and after January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (a) the amount of water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the greatest annual use prior to January 1, 2026, for uses specified in subdivision (3)(b) of this section plus the per capita allowance described in subdivision (3)(b)(ii) of this section. On and after January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715. Each municipality may be subject to controls adopted pursuant to such section for amounts in excess of the allocations.

(5) Unless an integrated management plan, rule, or order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a nonmunicipal commercial or industrial water user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Prior to January 1, 2026, the minimum annual allocation for a nonmunicipal commercial or industrial user shall be the greater of either (i) the amount specified in a permit issued pursuant to the Industrial Ground Water Regulatory Act or (ii) the amount necessary to achieve the commercial or industrial use, including all new or expanded uses that consume less than twenty-five million gallons annually. Any increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715;

(b) Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715. This subdivision does not apply to a water user described in this subdivision that is regulated by the Industrial Ground Water Regulatory Act and the United States Nuclear Regulatory Commission;

(c) On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designat-

ed as overappropriated pursuant to section 46-713 shall be the amount specified in subdivision (5)(a) or (b) of this section;

(d) On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715; and

(e) Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than twenty-five million gallons, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such nonmunicipal industrial or commercial user is located.

Source: Laws 1982, LB 375, § 12; Laws 1991, LB 51, § 5; Laws 1993, LB 439, § 3; R.S.1943, (1993), § 46-673.10; Laws 1996, LB 108, § 32; Laws 2001, LB 135, § 3; R.S.Supp.,2002, § 46-656.26; Laws 2004, LB 962, § 80; Laws 2006, LB 1226, § 28.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-741 District; review controls.

A district may review any allocation, rotation, or reduction control imposed in a management area and shall adjust allocations, rotations, or reductions to accommodate new or additional uses or otherwise reflect findings of such review, consistent with the ground water management objectives. Such review shall consider new development or additional ground water uses within the area, more accurate data or information that was not available at the time of the allocation, rotation, or reduction order, the availability of supplemental water supplies, any changes in ground water recharge, and such other factors as the district deems appropriate.

Source: Laws 1982, LB 375, § 13; Laws 1993, LB 439, § 4; R.S.1943, (1993), § 46-673.11; Laws 1996, LB 108, § 33; Laws 2001, LB 135, § 4; R.S.Supp.,2002, § 46-656.27; Laws 2004, LB 962, § 81.

46-742 Transport of ground water; prohibited; when.

(1) Whenever the drilling of new wells has been stayed pursuant to section 46-714, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the stay took effect, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district in which the stay is in effect and, if the water is withdrawn in another natural resources district, by the other district.

(2) Whenever a natural resources district pursuant to subdivision (1)(m) of section 46-739 has closed all or part of the district to the issuance of additional well permits, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the affected area was closed to the issuance of additional well permits, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district that closed the affected area to additional well permits and, if the water is withdrawn in another natural resources district, by the other district.

(3) If a proposed withdrawal and transport of water under subsection (1) or (2) of this section is intended for municipal purposes, the natural resources district shall approve the withdrawal and transport of ground water into the affected area when a public water supplier providing water for municipal purposes receives a permit from the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 2003, LB 619, § 11; R.S.Supp.,2003, § 46-656.24; Laws 2004, LB 962, § 82.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

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.

46-744 Order; publication; effective; when.

Any order adopted pursuant to section 46-712, 46-718, 46-719, 46-725, or 46-726 shall be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date set for

the effective date of the order. The publication shall provide a general description of the text of all controls adopted or amended and shall identify all locations where a copy of the full text of the proposed controls may be obtained. The full text of all controls adopted shall be available to the public upon request at least thirty days prior to the effective date of the controls.

Such order shall become effective on the date specified by the adopting district, department, or board, as applicable.

Source: Laws 1982, LB 375, § 9; Laws 1986, LB 894, § 29; R.S.1943, (1993), § 46-673.07; Laws 1996, LB 108, § 27; Laws 1997, LB 188, § 2; R.S.1943, (1998), § 46-656.21; Laws 2004, LB 962, § 84.

46-745 Natural resources district; cease and desist order; violation; penalty; Attorney General; duties; Department of Justice Natural Resources Enforcement Fund; created; use; investment.

(1) Any person who violates a cease and desist order issued by a district pursuant to section 46-707 shall be subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day an intentional violation occurs. In assessing the amount of the civil penalty, the court shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously convicted or subjected to a civil penalty under this section, and any economic benefit derived from non-compliance. Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The court shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

(2)(a) Prior to issuing a cease and desist order against a public water supplier as defined in section 46-638, the district shall consult with the Attorney General. If the Attorney General determines that the district does not have sufficient grounds to issue a cease and desist order, the district shall abide by such determination and shall not issue a cease and desist order. The Attorney General shall have exclusive authority to enforce actions under this subsection.

(b) Any determination as to whether a water well is properly registered under sections 46-602 to 46-604 or whether a water well is properly permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be made by the Department of Natural Resources.

(3) 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. Any recovered costs of the action shall be: (a) Remitted to the State Treasurer for credit to the Department of Justice Natural Resources Enforcement Fund if the action is brought by the Attorney General; (b) credited to the applicable county fund if the action is brought by the county attorney; and (c) remitted to the district if the action is brought by the district's private attorney.

(4) The Department of Justice Natural Resources Enforcement Fund is created. The fund shall consist of money credited pursuant to subsection (3) of this section. Money in the fund shall be used to reimburse the office of the Attorney General for the costs incurred in enforcing 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.

Source: Laws 1981, LB 146, § 8; R.S.Supp.,1981, § 46-674.01; Laws 1984, LB 1071, § 16; R.S.1943, (1993), § 46-663.02; Laws 1996, LB 108, § 16; Laws 2003, LB 30, § 1; R.S.Supp.,2003, § 46-656.10; Laws 2004, LB 962, § 85.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

Nebraska Capital Expansion Act, see section 72-1269.

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

46-746 Violations; civil penalty.

(1) Any person who violates any cease and desist order issued by a district pursuant to section 46-707 or any controls, rules, or regulations adopted by a natural resources district relating to a management area shall be subject to the imposition of penalties imposed through the controls adopted by the district, including, but not limited to, having any allocation of water granted or irrigated acres certified by the district reduced in whole or in part. Before a district takes any action, notice and hearing shall be provided to such person.

(2) Any person who violates any of the provisions of sections 46-721 to 46-733 for which a penalty is not otherwise provided, other than the requirements imposed on a district, the Director of Natural Resources, or the Department of Natural Resources, shall be subject to a civil penalty of not more than five hundred dollars. Each day of continued violation shall constitute a separate offense.

Source: Laws 1986, LB 894, § 16; R.S.1943, (1993), § 46-674.17; Laws 1996, LB 108, § 69; Laws 2000, LB 900, § 216; R.S.Supp.,2002, § 46-656.63; Laws 2004, LB 962, § 86.

A natural resources district may enforce a ground water user's obligations by imposing penalties, including, but not limited to, having any allocation of water granted or irrigated acres certified by the district reduced in whole or in part by utilizing the procedure adopted in the rules and regulations of the natural resources district. It is unnecessary for a natural resources district to promulgate rules and regulations restating

the potential penalty of restricting a violator's ground water access. *Prokop v. Lower Loup NRD*, 302 Neb. 10, 921 N.W.2d 375 (2019).

The Ground Water Management and Protection Act does not limit the possibility of judicial review of the determination of penalties, and such review is conducted de novo. *Prokop v. Lower Loup NRD*, 302 Neb. 10, 921 N.W.2d 375 (2019).

46-747 Hearings; subject to review.

All hearings conducted pursuant to the Nebraska Ground Water Management and Protection Act shall be of record and available for review.

Source: Laws 1975, LB 577, § 13; Laws 1984, LB 1071, § 10; R.S.1943, (1993), § 46-668; Laws 1996, LB 108, § 70; R.S.1943, (1998), § 46-656.64; Laws 2004, LB 962, § 87.

46-748 Rules and regulations.

The Director of Natural Resources shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties assigned to the director or the Department of Natural Resources by the Nebraska Ground Water Management and Protection Act.

Source: Laws 1996, LB 108, § 68; Laws 2000, LB 900, § 215; R.S.Supp.,2002, § 46-656.62; Laws 2004, LB 962, § 88.

Cross References

Administrative Procedure Act, see section 84-920.

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.

In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in section 84-917(6)(a), but is required to make independent factual determinations based upon the record and reach its own independent conclusions with respect to the matters at issue. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Upon an appeal from an order of a natural resources district, a district court reviews the natural resources district's decision

de novo on the record of the natural resources district. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Where a natural resources district held a hearing and received formal proof regarding the merits of a request for a variance, its order denying the variance request was judicial in nature and was appealable to the district court. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

46-751 Ground Water Management Fund; created; use; investment.

All fees paid to the Director of Natural Resources pursuant to the Nebraska Ground Water Management and Protection Act shall be remitted to the State Treasurer for credit to the Ground Water Management Fund which is hereby created and which shall be administered by the director. Any money credited to the fund may be utilized by the director for payments of expenses incurred in the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1975, LB 577, § 15; Laws 1984, LB 1071, § 12; Laws 1995, LB 7, § 42; R.S.Supp.,1995, § 46-670; Laws 1996, LB 108, § 39; Laws 2000, LB 900, § 200; R.S.Supp.,2002, § 46-656.33; Laws 2004, LB 962, § 91.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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.

46-754 Interrelated Water Management Plan Program; created; grants; commission; duties; use.

The Interrelated Water Management Plan Program is created for the purpose of facilitating and funding the duties of districts arising under the Nebraska Ground Water Management and Protection Act. The program shall function as a grant program administered by the Nebraska Natural Resources Commission and the Department of Natural Resources upon recommendations of the commission using funds appropriated for the program. The commission shall develop guidelines and limitations for grant requests for funding such district's duties, including studies required to carry out those duties. Grant requests shall

be made to the commission for review in a manner and form prescribed by the commission. The amounts requested and approved shall be supported by a minimum local revenue match comprising twenty percent of the total project cost. The Director of Natural Resources shall expend funds to implement the commission's recommendations for fiscal support under the program only upon the commission's approval.

Source: Laws 2006, LB 1226, § 20.

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 8

NATURAL LAKES

Section

- 46-801. Natural lakes; drainage; diversion; application.
- 46-802. Application; recording; investigation.
- 46-803. Application; approval; when authorized.
- 46-804. Application; rejection; when authorized.
- 46-805. Appeal; procedure.
- 46-806. Sections; when inapplicable.
- 46-807. Violations; penalty.

46-801 Natural lakes; drainage; diversion; application.

No person shall drain, lower, or in any manner reduce or divert the water supply of any natural or perennial lake, if the area exceeds twenty acres at low water stage or if the lake is of such depth and character as to have more economic importance for aquaculture, hunting, or other purpose than the bed of such lake would have for agricultural purposes. Any person intending to drain, lower, divert, or in any way reduce the waters or water supply of any natural or perennial lake shall, before commencing the construction of any such work for drainage or diversion, make application to the Department of Natural Resources for a permit to do so.

Source: Laws 1919, c. 190, tit. VII, art. V, § 1, p. 857; C.S.1922, § 8480; C.S.1929, § 81-6401; R.S.1943, § 81-702; Laws 1957, c. 365, § 14, p. 1239; Laws 1994, LB 1165, § 21; Laws 2000, LB 900, § 225.

Drainage of natural lake may be enjoined. *Lackaff v. Bogue*, 158 Neb. 174, 62 N.W.2d 889 (1954).

Drainage of natural lakes covering an area in excess of twenty acres is governed by this section. *Lackaff v. Department of Roads & Irrigation*, 153 Neb. 217, 43 N.W.2d 576 (1950).

Whether water constitutes natural or perennial lake, requiring permit under this section before attempting to drain same, is question of fact to be determined from evidence. *Beem v. Davis*, 111 Neb. 96, 195 N.W. 948 (1923).

46-802 Application; recording; investigation.

On the receipt of such application in the form prescribed by the Department of Natural Resources, the department shall cause the same to be recorded in its office. The department shall make a careful examination to ascertain whether it sets forth all the facts necessary to enable the department to determine the nature and extent of the proposed work of drainage and diversion. If such an examination shows the application to be in any way defective, it shall return the same to the applicant for correction.

Source: Laws 1919, c. 190, tit. VII, art. V, § 2, p. 858; C.S.1922, § 8481; C.S.1929, § 81-6402; R.S.1943, § 81-703; Laws 1957, c. 365, § 15, p. 1239; Laws 2000, LB 900, § 226.

46-803 Application; approval; when authorized.

If the proposed work of drainage or diversion will not result in injury or damage to any person and will not be otherwise detrimental to the public welfare but will result in economic benefit to the state, the Department of Natural Resources shall approve the same by endorsement thereon. It shall make a record of such endorsement thereon in some proper manner in its office. It shall also return the same so endorsed to the applicant. Such applicant shall, upon receipt thereof, be authorized to proceed with the work and to take such measures as may be necessary to its completion.

Source: Laws 1919, c. 190, tit. VII, art. V, § 3, p. 858; C.S.1922, § 8482; C.S.1929, § 81-6403; R.S.1943, § 81-704; Laws 1957, c. 365, § 16, p. 1240; Laws 2000, LB 900, § 227.

46-804 Application; rejection; when authorized.

If it appears to the Department of Natural Resources that the proposed works of drainage or diversion will result in injury or damage to any person or will be detrimental to the public welfare and not result in economic benefit to the state, the department shall refuse to approve the application. The party making such application shall not prosecute such work so long as such refusal shall continue in force.

Source: Laws 1919, c. 190, tit. VII, art. V, § 4, p. 858; C.S.1922, § 8483; C.S.1929, § 81-6404; R.S.1943, § 81-705; Laws 1957, c. 365, § 17, p. 1240; Laws 2000, LB 900, § 228.

Permit to drain natural lake should not be granted where it will result in damage to another person. *Lackaff v. Department of Roads & Irrigation*, 153 Neb. 217, 43 N.W.2d 576 (1950).

46-805 Appeal; procedure.

An applicant, feeling himself or herself aggrieved by the endorsement made upon his or her application, may take an appeal therefrom to the district court of the county in which the proposed works may be situated. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Source: Laws 1919, c. 190, tit. VII, art. V, § 5, p. 858; C.S.1922, § 8484; C.S.1929, § 81-6405; R.S.1943, § 81-706; Laws 1957, c. 365, § 18, p. 1240; Laws 1988, LB 352, § 81.

Cross References

Administrative Procedure Act, see section 84-920.

On appeal to the district court, trial is de novo. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

46-806 Sections; when inapplicable.

In the event that the ownership of all the land used for drainage construction and of all the land forming the shoreline and the bed of said lake or lakes is vested in the person performing said work of drainage or diversion, the provisions of sections 46-801 to 46-807 do not apply.

Source: Laws 1919, c. 190, tit. VII, art. V, § 6, p. 859; C.S.1922, § 8485; C.S.1929, § 81-6406; R.S.1943, § 81-707.

46-807 Violations; penalty.

Any person violating the provisions of sections 46-801 to 46-807 shall be guilty of a Class II misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, § 7, p. 859; C.S.1922, § 8486; C.S.1929, § 81-6407; R.S.1943, § 81-708; Laws 1977, LB 40, § 268.

ARTICLE 9**RIVER BASIN COMMISSION**

Section

46-901. Repealed. Laws 1987, LB 567, § 1.

46-901 Repealed. Laws 1987, LB 567, § 1.**ARTICLE 10****RURAL WATER DISTRICT**

Cross References

Audit, see section 84-304.

Bonds, see Chapter 10, article 1.

Conservation Corporation Act, see section 2-4201.

Fluoridation of water supply, liability for costs, see section 71-3305.

Natural resources district, merger with, legislative intent, see section 2-3201.

Nebraska Budget Act, see section 13-501.

Public Funds Deposit Security Act, see section 77-2386.

Public water supplier:

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-638.

Spacing of water wells, see sections 46-638 and 46-651 et seq.

School lands, right to lease, see section 72-232.

Underground water storage, see section 46-226.03.

Water appropriations, see sections 46-2,120 to 46-2,129.

Wellhead Protection Area Act, powers and duties, see section 46-1501 et seq.

Section

46-1001. Terms, defined.
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§ 46-1001

IRRIGATION AND REGULATION OF WATER

Section

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46-1025.	Consolidated district; board; members; officers; election.
46-1026.	Consolidated district; participating members.

46-1001 Terms, defined.

As used in sections 46-1001 to 46-1020, unless the context otherwise requires:

- (1) District means a rural water district organized pursuant to sections 46-1001 to 46-1020;
- (2) Board means the governing body of a district;
- (3) The terms county board and county clerk mean, respectively, the county board and county clerk of the county in which the greatest portion of the territory of any existing or proposed rural water district is located;
- (4) Participating member means an individual, firm, partnership, limited liability company, association, or corporation which owns land located within a district and which has subscribed to one or more benefit units of such district; and
- (5) Director means the Director of Natural Resources.

Source: Laws 1967, c. 279, § 1, p. 747; Laws 1993, LB 121, § 280; Laws 2000, LB 900, § 229.

46-1001.01 Rural water districts organized prior to June 30, 1972; effect.

After June 30, 1972, no new rural water districts shall be organized under the provisions of sections 46-1001 to 46-1020. Attempted formations of rural water districts under sections 46-1001 to 46-1020 which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such district. All rural water districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections 46-1001 to 46-1020 and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 64, p. 135; Laws 1971, LB 544, § 10.

46-1002 Rural water districts; petition.

The county board of each county in this state shall, upon a proper petition being presented, incorporate and organize rural water districts in the manner provided by sections 46-1001 to 46-1020. No such district shall be incorporated when its boundaries lie within five miles of any incorporated city of the metropolitan, primary, or first class, within two miles of any incorporated city of the second class, or within one mile of any incorporated village until approval has been given by the governing body of the city or village.

Source: Laws 1967, c. 279, § 2, p. 748; Laws 1972, LB 1239, § 1.

46-1003 District; petition; contents.

A petition addressed to the county board praying for the incorporation of a district, signed by or on behalf of at least fifty percent of the owners of the land within the proposed district may be filed with the county clerk. The petition shall define the boundaries of the proposed district and shall state (1) that the lands within such boundaries are without an adequate water supply; (2) that the construction and maintenance of ponds or reservoirs or pipelines or wells or check dams or pumping installations, or any other facility for water storage, transportation or utilization, or that the construction and maintenance of any combination of such projects is necessary for the improvement of the area; and (3) that such improvement or works will be conducive to and will promote the public health, convenience and welfare.

Source: Laws 1967, c. 279, § 3, p. 748.

The Rural Water District Act does not require the district to obtain a permit to dig wells for the purpose of supplying water to its patrons in need thereof; rather, the act specifically authorizes the transportation of water into another district for that purpose. *McDowell v. Rural Water District No. 2*, 204 Neb. 401, 282 N.W.2d 594 (1979).

46-1004 District; petition; county clerk; notice; contents.

Whenever a petition as provided in section 46-1003 is filed with the county clerk, the county clerk shall thereupon give notice to the county board of the filing and pendency of such petition and the county board shall forthwith fix a time and place within thirty days after the date of filing of the petition for a hearing of the same, and the county clerk shall, at least seven days before the date fixed for such hearing, give or send by registered or certified mail written notice thereof to each of the petitioners and shall transmit to the director one copy of the petition and notice of the time and place the same is set for consideration. The county clerk shall also, at least seven days before the date fixed for such hearing, cause to be published in a newspaper of general circulation in the county a notice of the hearing. The published notice shall (1) define the boundaries of the proposed district; (2) state the time and place of hearing; (3) state that all owners of land within such boundaries may appear and be heard; and (4) state that a rural water district, if incorporated, shall have no power or authority to levy any taxes whatsoever.

Source: Laws 1967, c. 279, § 4, p. 748; Laws 2000, LB 900, § 230.

46-1005 District; hearing; order.

At the time and place set for the hearing and consideration of the petition, it shall be the duty of the county board to ascertain (1) whether proper notice of the hearing has been given to the signers of the petition, the director, and the landowners in the district as required by section 46-1004; (2) whether lands within the area defined in the petition are without an adequate water supply;

(3) whether the construction and maintenance of ponds, reservoirs, pipelines, wells, check dams, pumping installations, or any other facility for the storage, transportation, or utilization of water or the construction and maintenance of any combination of such proposed projects are necessary for the improvement of the area. The county board shall make no affirmative finding that any proposed project is necessary if the construction and maintenance of such project would encourage the cultivation of lands which are submarginal and which should be devoted to other uses in the public interest. The county board shall make no affirmative finding that any proposed project is necessary unless the director has approved such project; (4) whether such improvement or works will be conducive to and will tend to promote the public health, convenience, and welfare; and (5) whether the boundaries of the proposed district lie within five miles of any incorporated city or village and whether approval for incorporation of the district has been given by the governing body of such city or village. If upon such consideration it is found that such petition is in conformity with the requirements of sections 46-1001 to 46-1020, the county board shall thereupon immediately declare the district within the boundaries defined in the petition to constitute a public corporation and to be incorporated as a rural water district under the name of Rural Water District No., County, Nebraska (inserting number in order of incorporation and name of county) and thereupon shall enter upon its records full minutes of such hearing, together with a declaration that thenceforth such district shall constitute a body politic and corporate under such corporate name for the purposes of sections 46-1001 to 46-1020.

Source: Laws 1967, c. 279, § 5, p. 749; Laws 2000, LB 900, § 231.

46-1006 Board of directors; selection; bylaws; adopt.

Immediately following the granting of incorporation by the county board, the owners of land within any such district shall select from their number a board of directors. The number of members on such board, not to exceed nine, shall be determined by majority vote of those owners of land present; *Provided*, any original director who shall fail to subscribe to one or more benefit units and pay the established unit fee for each unit to which he subscribes within thirty days after entry in the minutes of the board of a declaration of availability of such benefit units for subscription, shall forfeit his office. Within thirty days after the election of the original board, proposed bylaws shall be submitted for adoption at a special meeting of owners of land located within the district, written notice of which shall be mailed to each such landowner. Those owners of land located within the district present at such special meeting may adopt and amend any of such proposed bylaws and may propose and adopt additional or other bylaws. Such bylaws may be amended at any annual or special meeting of the participating members of the district.

Source: Laws 1967, c. 279, § 6, p. 750.

46-1007 Board; meetings; rules and regulations; adopt; vacancies.

The board shall be the governing body of the district and shall meet annually on the same day the annual meeting of participating members of the district is held pursuant to section 46-1016, and such annual meeting of the board of directors shall follow the annual meeting of participating members, and at such other times as may be determined by the board or upon call by the chairman or

any two members of the board. Vacancies on the board shall be filled for the unexpired term, and until a successor is elected and has qualified, by appointment by the remaining members of the board. The board shall adopt such rules and regulations in conformity with the provisions of sections 46-1001 to 46-1020 and the bylaws of the district as are deemed necessary for the conduct of the business of the district. It shall be the duty of the secretary to cause an entry to be made upon its records showing all of its minutes, decisions and orders made pursuant to the provisions of sections 46-1001 to 46-1020.

Source: Laws 1967, c. 279, § 7, p. 750.

46-1008 District; powers.

Every district incorporated under sections 46-1001 to 46-1020 shall:

- (1) Have perpetual succession, subject to dissolution as provided by such sections;
- (2) In all cases be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of one year;
- (3) Have the power of eminent domain to acquire land or interests in land within the district for the uses and purposes provided in this section;
- (4) Be empowered to sue and be sued;
- (5) Be capable of contracting and being contracted with;
- (6) Be authorized and empowered to hold such real and personal property as may come into its possession by will, gift, purchase, or otherwise, as authorized by law;
- (7) Have power to construct, install, maintain, and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water and such appurtenant structures and equipment as may be necessary to carry out the purposes of its organization;
- (8) Have power to transfer water within the district pursuant to sections 46-2,127 to 46-2,129;
- (9) Have power to cooperate with and enter into such agreements as deemed necessary with the Secretary of the United States Department of Agriculture or his or her duly authorized representative and shall have power to accept such financial or other aid which the Secretary of the United States Department of Agriculture is empowered to give pursuant to 7 U.S.C. 1921 et seq., or amendments thereto; and
- (10) Have power to borrow money for the financing of the cost of the construction or purchase of any project or projects necessary to carry out the purposes for which such district was organized and to execute notes and mortgages in evidence thereof with interest, or combined interest and mortgage insurance charges. Any district shall have the same power to borrow money for the refinancing of any such project or projects. Any such loan may be secured by any or all of the physical assets owned by the district, including easements and rights-of-way, except that no district organized under sections 46-1001 to 46-1020 shall have any power or authority to levy any taxes whatsoever.

Source: Laws 1967, c. 279, § 8, p. 751; Laws 1971, LB 514, § 1; Laws 1972, LB 1042, § 1; Laws 1975, LB 492, § 1; Laws 1995, LB 99, § 20.

46-1009 Board; contracts; enter into.

In carrying out the provisions of sections 46-1001 to 46-1020, the board of directors of any such rural water district is authorized to enter into contracts with agencies of the State of Nebraska or of the United States, or municipalities, for the obtaining of water service for use by the district or for furnishing the same for domestic or other uses.

Source: Laws 1967, c. 279, § 9, p. 752.

46-1010 Board; employees.

The board of any such district in this state acting in its capacity as the governing body may employ such common and skilled labor, and professional and other services, as may be necessary to the proper performance of such work or improvement as is proposed to be done within any such district, and the maintenance thereof.

Source: Laws 1967, c. 279, § 10, p. 752.

46-1011 Plans and specifications; filing; approval; benefit units; water sale.

Plans and specifications for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the director, the Department of Environment and Energy, and the secretary of the district. No construction of any such improvement shall begin until the plans and specifications for such improvement have been approved by the director and the Department of Environment and Energy, except that if the improvement involves a public water system as defined in section 71-5301, only the Department of Environment and Energy shall be required to review the plans and specifications for such improvement and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental regulations adopted thereunder.

The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he or she desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Source: Laws 1967, c. 279, § 11, p. 752; Laws 1979, LB 546, § 2; Laws 1996, LB 1044, § 262; Laws 2000, LB 900, § 232; Laws 2001, LB 667, § 10; Laws 2007, LB296, § 205; Laws 2021, LB148, § 56.
Operative date July 1, 2021.

Cross References

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

46-1012 Owners of land outside of district; petition; contents.

Owners of land outside any district which can economically be served by the facilities of the district may petition to become attached to such district. Such

petition for attachment shall be supported by signatures of landowners in the same manner as prescribed in section 46-1003. Such petition shall be filed with the county clerk addressed to the county board and shall define the boundaries of lands owned by the petitioners desired to be attached, and shall state (1) the name of the district to which attachment is desired; (2) that such lands are without an adequate water supply; and (3) that attachment to such district will be conducive to and will promote the public health, convenience and welfare.

Source: Laws 1967, c. 279, § 12, p. 753; Laws 1972, LB 1502, § 1.

46-1013 Owners outside of district; petition; notice; hearing.

Notice of the filing of a petition for attachment fixing the time and place of hearing and giving notice thereof shall be in the same manner as prescribed in section 46-1004, and in addition thereto the county clerk shall send by registered or certified mail, to each director of the board of the district named in the petition, a copy of such petition and notice of the time and place the same shall be considered.

Source: Laws 1967, c. 279, § 13, p. 753.

46-1014 Owners outside of district; hearing; boundaries; conditions.

At the time and place set for the hearing and consideration of the petition, the county board shall ascertain (1) whether proper notice has been given as required by section 46-1013 and (2) whether the statements contained in the petition are true. If true and if a majority of the members of the board of the district to which attachment is desired do not object to such statement, the county board shall enter into its minutes such findings and shall set forth in such minutes a description of the new boundaries of such district. Thereafter owners of land located within the attached territory shall be entitled to subscribe to such benefit units upon such terms and conditions as the board in its discretion may provide. Any owner of land located within any territory attached to a district as provided by sections 46-1001 to 46-1020, who shall subscribe to one or more benefit units and comply with terms and conditions provided by the board, shall be entitled to the same rights as participating members are entitled to.

Source: Laws 1967, c. 279, § 14, p. 753.

46-1015 Board; bonds; purpose; interest; rate; payment; participating members; conditions.

The board of directors of any water district shall have power to cause to be constructed within such district such works as are authorized by sections 46-1001 to 46-1020 and to issue revenue bonds therefor which shall be exempt from taxation. Such bonds shall be self-liquidating out of the revenue to be derived by the district for its services and facilities, shall be issued to mature in such installments as shall be determined by the board of directors of the district, and shall bear interest payable monthly, annually, or semiannually. Such revenue bonds may also be issued to refund outstanding revenue bonds or notes or other evidences of indebtedness issued to pay costs of improvements for which bonds could be issued. Upon determining a schedule of benefit units and unit fees, the board shall cause a declaration of availability of such units for subscription to be entered in its minutes and any individual who fails to become a participating member within thirty days thereafter shall not be eligible to hold

office as a director, nor shall any individual, firm, partnership, limited liability company, association, or corporation which fails to become a participating member within ninety days after such declaration be qualified to participate at any meeting or vote at any election held thereafter unless such individual, firm, partnership, limited liability company, association, or corporation shall thereafter become a participating member.

Source: Laws 1967, c. 279, § 15, p. 754; Laws 1969, c. 51, § 118, p. 346; Laws 1975, LB 492, § 2; Laws 1993, LB 121, § 281.

46-1016 Board; members; term; election.

The term of office of every member elected to an original board shall be until the date of the annual meeting of the participating members of either the first, second or third year following the year of the incorporation of the district and until their successors are elected and have qualified, and as nearly as possible the terms of an equal number of directors on any such board shall expire on each of such dates. At the annual meeting of each year after the year of the election of the original board members, elections shall be held to elect directors to fill any position on the board, the term of office of which has expired, and any director so elected shall hold office for a term of three years and until his successor is elected and qualified. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district between January 1 and March 1 of each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be mailed to each of its participating members or shall cause such notice to be published in a newspaper of general circulation within the district. Every such notice shall be mailed or published not less than ten nor more than thirty days prior to any such meeting. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which he has subscribed.

Source: Laws 1967, c. 279, § 16, p. 754.

46-1017 Board; officers; election.

The board of directors shall annually elect a chairman, vice-chairman, secretary and treasurer for a term of one year and until a successor is elected and qualified.

Source: Laws 1967, c. 279, § 17, p. 755.

46-1018 Board; powers and duties; compensation; budget; audit; reports.

It shall be the duty of the chairperson of the board of directors to keep in repair such works as are constructed by the district as authorized in sections 46-1001 to 46-1020 and to operate such works, all as directed by the board. Such works shall be operated in conformance with the rules and regulations of the Department of Health and Human Services relating to water supply systems. The chairperson and all persons who may perform any service or labor as provided in sections 46-1001 to 46-1020 shall be paid such just and reasonable compensation as may be allowed by the board of directors, and such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary to produce sufficient revenue required by such budget,

cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting.

Source: Laws 1967, c. 279, § 18, p. 755; Laws 1996, LB 1044, § 263; Laws 2007, LB296, § 206.

46-1019 District; dissolution; procedure.

Whenever a petition signed by three-fourths of the landowners in any district organized under the provisions of sections 46-1001 to 46-1020 is presented to the county board and it shall appear from such petition that such district owns no property of any kind, exclusive of records, maps, plans and files; that all of its debts and obligations have been fully paid; that the board of directors has not held a meeting for more than one year prior to the date of signing such petition; that the district is not functioning, and will probably continue to be inoperative, the county board shall, after such finding, issue a certificate stating the allegations in such petition as true and declaring such district dissolved, and shall make full minutes of such hearing in its records and deliver such certificate to the secretary of such district. The secretary of such district shall, within thirty days thereafter, deliver all records, maps, plans and files to the county clerk, and thereupon such district shall be dissolved.

Source: Laws 1967, c. 279, § 19, p. 756.

46-1020 District; withdrawal of lands; petition; hearing; county board; findings.

If it becomes apparent that certain lands included within a district cannot be economically or adequately served by the facilities of the district, the owners of such lands may petition the county board to release those lands from the district. The petition shall describe by section or fraction thereof and by township and range the lands affected and be signed by all owners desiring release and be endorsed by the board of directors of the district. After a finding that the granting of the petition is to the best interests of the affected landowners and the district, the county board shall issue a certificate stating that the lands involved are released and separated from the district. Full minutes of the hearing shall be entered in the records of the county board and the certificate shall be delivered to the secretary of the district who shall within thirty days cause the records of the district to be amended to exclude the lands affected.

Source: Laws 1967, c. 279, § 20, p. 756.

46-1021 Consolidation of districts; county board; order.

Two or more districts incorporated in the manner provided by sections 46-1001 to 46-1020 prior to July 1, 1972, may be consolidated by order of the county board of the county in which the district with the largest acreage of land was originally incorporated and organized.

Source: Laws 1972, LB 1502, § 2.

46-1022 Consolidation of districts; members; approval; majority vote; petition; contents.

The participating members of each district to be consolidated shall first authorize such consolidation by majority vote of such members present at a meeting held upon not less than ten days' written notice to such members

stating the purpose of such meeting. A petition addressed to the county board, executed by the chairman and secretary of each district seeking consolidation, shall (1) set forth the names of the districts seeking consolidation; (2) be accompanied by a map showing the boundaries of such districts; (3) state that the consolidation has been approved by a majority vote of the participating members of each district at a meeting held upon notice as required in this section; (4) state that the holders of bonds and other instruments of indebtedness of each of such districts have consented to the proposed consolidation and have agreed in writing to the assumption of such indebtedness by the proposed consolidated district; and (5) state that the consolidated district will provide adequate water service within the area of the consolidated district.

Source: Laws 1972, LB 1502, § 3.

46-1023 Consolidation of districts; petition; filing; notice; contents; hearing.

Whenever a petition as provided in section 46-1022 is filed with the county clerk, the county clerk shall thereupon give notice to the county board of the filing and pendency of such petition and the county board shall forthwith fix a time and place within thirty days after the date of filing of the petition for a hearing of the same, and the county clerk shall, at least seven days before the date fixed for such hearing, give or send by registered or certified mail written notice thereof to the chairperson of each district seeking consolidation and shall transmit to the director one copy of the petition and notice of the time and place the same is set for hearing. The county clerk shall also, at least seven days before the date fixed for such hearing, cause a notice of the hearing to be published in a newspaper of general circulation in the county. The published notice shall (1) identify by name the districts seeking consolidation; (2) state the time and place of the hearing; (3) state that all interested persons may appear and be heard; and (4) state that a consolidated water district shall have no power or authority to levy any taxes whatsoever.

Source: Laws 1972, LB 1502, § 4; Laws 2000, LB 900, § 233.

46-1024 Consolidation of districts; hearing; county board; order.

If, at the time and place set for the hearing, the county board shall find and determine that (1) notice of the hearing has been given as required by section 46-1023; (2) the proposed consolidation has been approved by a majority vote of the participating members of each district seeking consolidation as provided by section 46-1022; and (3) that the statements contained in the petition for consolidation are true, the county board shall thereupon enter an order declaring the area within the boundaries of the rural water districts seeking consolidation to be incorporated as a consolidated rural water district under the name of Consolidated Rural Water District No., County, Nebraska (inserting number in order of consolidation and name of county), and such consolidated district shall thereupon assume all of the obligations and liabilities and shall be entitled to the benefits, franchises and privileges of each of the districts consolidated by such order, and shall have all of the powers of rural water districts.

Source: Laws 1972, LB 1502, § 5.

46-1025 Consolidated district; board; members; officers; election.

Immediately following the entry of the order of consolidation by the county board, the members of the boards of districts of the former rural water districts which were consolidated by such order shall meet and elect from among themselves a chairman, vice-chairman, secretary and treasurer. The offices of secretary and treasurer may be held by one person. No more than two of such offices may be held by persons from one of such former rural water districts. The members of such boards shall adopt the bylaws of one of such former districts with such changes and modifications as the directors shall deem necessary. The members of such boards of directors shall continue to serve as members of the board of directors of the consolidated district until the next annual meeting of the consolidated district as fixed by the bylaws, at which time a board of directors, not to exceed nine in number, shall be elected for staggered terms of one, two, and three years in the manner prescribed for the election of an original board under section 46-1016.

Source: Laws 1972, LB 1502, § 6.

46-1026 Consolidated district; participating members.

Participating members of each district forming a consolidated district shall be deemed to be participating members of the consolidated district.

Source: Laws 1972, LB 1502, § 7.

ARTICLE 11 CHEMIGATION

Cross References

Chemigation system inspections, training program, see section 46-1223.01.

Environmental audit, use of results, see sections 25-21,254 to 25-21,264.

Section

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§ 46-1101

IRRIGATION AND REGULATION OF WATER

Section

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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.

46-1104 Applicator, defined.

Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.

Source: Laws 1986, LB 284, § 4.

46-1105 Chemical, defined.

Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

Source: Laws 1986, LB 284, § 5.

46-1106 Chemigation, defined.

Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an onfarm irrigation distribution system.

Source: Laws 1986, LB 284, § 6.

46-1107 Council, defined.

Council shall mean the Environmental Quality Council.

Source: Laws 1986, LB 284, § 7; Laws 1993, LB 3, § 29.

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.

46-1110 District, defined.

District shall mean a natural resources district created pursuant to Chapter 2, article 32.

Source: Laws 1986, LB 284, § 10.

46-1111 Fertilizer, defined.

Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

Source: Laws 1986, LB 284, § 11.

46-1112 Injection location, defined.

Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

Source: Laws 1986, LB 284, § 12.

46-1113 Irrigation distribution system, defined.

Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

Source: Laws 1986, LB 284, § 13.

46-1114 Open discharge system, defined.

Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

Source: Laws 1986, LB 284, § 14.

46-1115 Permitholder, defined.

Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

Source: Laws 1986, LB 284, § 15.

46-1116 Pesticide, defined.

Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Source: Laws 1986, LB 284, § 16.

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.

46-1117.01 Special permit; issuance.

Permits for those systems determined through inspection by the district as not needing all of the safety equipment prescribed by the Nebraska Chemigation Act shall be forwarded immediately to the department for review. If the department determines that certain elements of the safety equipment otherwise prescribed by the act are not necessary, it shall so inform the district. The district shall then issue a special permit as approved by the department. Issuance of such special permits shall not relieve the permitholder or applicator from compliance with all other responsibilities under the act.

Source: Laws 1988, LB 1046, § 2.

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.

46-1120 Application; contents.

Each application to engage in chemigation shall contain (1) the name and post office address of the applicant, (2) the location by legal description of the land where chemigation is to be used, and (3) such other information as the department, after consultation with the district, may deem necessary.

Source: Laws 1986, LB 284, § 20.

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.

46-1122 Replacement or alteration of chemigation equipment; notice; inspection.

Any permitholder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall conduct an inspection of the replaced or altered equipment and shall approve the continuance of chemigation if the replaced or altered equipment remains in compliance with the requirements of section 46-1127. No additional permit fee shall be collected by the district for inspecting a previously approved injection location.

Source: Laws 1986, LB 284, § 22.

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.

46-1124 District; conduct inspections; inspection warrant.

(1) Each district shall conduct areawide, selective, and periodic inspections to insure compliance with the Nebraska Chemigation Act and rules and regulations adopted and promulgated under the act. A permitholder or any person believed by the district to be chemigating without a required permit shall be notified by the district of the district's right and intent to inspect the premises concerned. Authorized representatives of the district and the department shall have access at all reasonable times to inspect a chemigation system and to otherwise carry out their duties under the act. Prior to inspection such authorized representatives shall make reasonable efforts to obtain consent to inspect from the permitholder, his or her authorized employee, the applicator, or the owner or operator of the system. If consent for inspection is denied, such authorized representatives may apply to the district or county court of the county in which the chemigation system is located for an inspection warrant to require the permitholder or person believed to be chemigating without a required permit to allow the authorized representatives to enter onto his or her land to carry out their duties under the act or the rules and regulations.

(2) No person shall refuse entry or access to any authorized representative of the district or department who requests entry for purposes of inspection and who presents appropriate credentials and an inspection warrant, and no person shall obstruct, hamper, or interfere with any such inspection. Nothing in this

section shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant. If requested, the permit-holder, applicator, or person chemigating without a required permit shall receive a report specifying all facts found which relate to compliance status.

(3) Entry upon any property pursuant to the act shall not be considered to be trespass, and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the act shall not be recoverable on that account alone.

Source: Laws 1986, LB 284, § 24; Laws 1989, LB 619, § 1.

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.

46-1126 Permit denial, suspension, or revocation; procedures; suspend operation; when.

(1) Before a district denies, refuses to renew, suspends, or revokes a permit, it shall send to the applicant or permitholder a notice setting forth the specific reasons for the proposed action. The denial, refusal to renew, suspension, or revocation shall become final ten calendar days after mailing of the notice unless such person, within such ten-day period, gives the district written notice of a request for a hearing. If such request is made, the applicant or permitholder shall be given an opportunity for a hearing before the board of directors of the district and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the proposed action shall be affirmed or set aside. A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or permitholder.

(2) If the district or department concludes that there is or may be an actual or imminent threat of danger to persons or the environment by the operation of a chemigation system, the district or department shall immediately order suspension of the operation of the system. Any aggrieved person may, within ten days of receipt of an order of suspension pursuant to this section, request a hearing on such order. The hearing shall be held within ten days of receipt of the request. The district or department shall give written notice of the hearing by certified or registered mail or by personal service to the permitholder, applicator, or person responsible for the operation of the chemigation system. The district or department shall issue an order addressing the matters raised at the hearing within ten days after the hearing.

If the district or department concludes that the suspension should be continued, the district or department may, if necessary, apply for a restraining order or a temporary or permanent injunction against the permitholder, applicator,

or person responsible for the operation of the chemigation system pursuant to the procedure prescribed by section 46-1138.

Source: Laws 1986, LB 284, § 26; Laws 1989, LB 619, § 2.

46-1127 Irrigation distribution system; improper operation; penalty; equipment; rules and regulations.

(1) Any person who places any chemical in an irrigation distribution system or permits any chemical to be in an irrigation distribution system without having a properly operating (a) check and vacuum relief valve in the irrigation pipe, (b) inspection port or other device to check the performance of the check valve on the irrigation pipeline, (c) automatic low-pressure drain placed between the main check valve and the irrigation pump so that a solution will drain away from the source of water supply, (d) check valve in the chemical injection line, and (e) simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate or such other properly operating additional or replacement equipment as may be specified by the council pursuant to subsection (3) of this section shall be guilty of a Class IV misdemeanor.

(2) On or before October 1, 1986, the council shall adopt and promulgate rules and regulations specifying the standards for the equipment required pursuant to this section as are necessary to prevent the contamination of the water supply. The standards specified in such rules and regulations shall not be such as to impose an unduly severe or costly burden on any person without substantially contributing to the prevention of water contamination.

(3) The council may adopt and promulgate rules and regulations specifying equipment other than that required in subsection (1) of this section if changes in design, technology, or irrigation practices or other similar reasons warrant the use of equipment in addition to or in lieu of that enumerated in this section. Any equipment specified pursuant to this subsection shall provide protection to the water supply at least equal to that provided by the equipment required in subsection (1) of this section. The districts shall be given forty-five days to review and comment on rules and regulations proposed by the council prior to the hearing by the council.

Source: Laws 1972, LB 1343, § 1; Laws 1977, LB 40, § 267; Laws 1977, LB 421, § 1; Laws 1979, LB 4, § 1; R.S.1943, (1984), § 46-612.01; Laws 1986, LB 284, § 27.

46-1128 Applicators of chemicals; training sessions; certificate; expiration.

In order to insure that applicators of chemicals have sufficient scientific and practical knowledge in the use of chemigation, the director shall conduct training sessions directed toward thorough comprehension and knowledge of the safe use of chemigation or contract with the Cooperative Extension Service of the University of Nebraska to conduct such training sessions through its county extension agents and specialists in the state. If the department contracts for the training sessions, the Cooperative Extension Service shall be reimbursed for conducting the training sessions. The director shall issue a certificate acknowledging the satisfactory demonstration of competency to be determined by the director through the use of a written examination prepared and administered by the department. Each applicator's certificate, including such certifi-

ates issued prior to July 9, 1988, shall expire on January 1 of the fourth year after the date of issuance and shall be renewed upon the satisfactory completion of training and testing.

Source: Laws 1986, LB 284, § 28; Laws 1988, LB 1046, § 4.

46-1129 Training sessions; council; prescribe forms; adopt rules and regulations.

The council shall prescribe the necessary forms and adopt and promulgate such rules and regulations as shall be necessary to carry out the provisions of section 46-1128 regarding the conducting of training sessions and the issuing of certificates.

Source: Laws 1986, LB 284, § 29.

46-1129.01 Applicator's certificate; revocation; grounds.

An applicator's certificate may be revoked by the department if the applicator:

- (1) Operates a chemigation system that is known to be defective or not in compliance with permit requirements;
- (2) Fails to report any actual or suspected accident resulting from the use of chemigation;
- (3) Operates or authorizes operation of a chemigation system without the necessary permit; or
- (4) Violates any of the provisions of the Nebraska Chemigation Act or standards, rules, and regulations adopted and promulgated pursuant to such act.

Source: Laws 1988, LB 1046, § 5.

46-1130 Posting of signs.

Signs shall be posted which provide notice that chemicals are applied in irrigation water in the field in areas being treated by means of chemigation with chemicals which appear on the restricted use list in the Federal Insecticide, Fungicide, and Rodenticide Act or chemicals for which labels require posting.

Source: Laws 1986, LB 284, § 30.

46-1131 Accident; report required; investigation; cleanup and recovery plan.

The applicator or the permitholder shall report an actual or suspected accident related to the use of chemigation in his or her system to the department and the appropriate district within twenty-four hours of its discovery. Any accident resulting from the use of chemigation shall be investigated by the appropriate district and the department. In the event that the district or the department finds an adverse effect caused by such an accident, the department shall (1) determine the immediate danger presented by the accident, (2) take all steps necessary to assure immediate public safety, and (3) develop a plan of cleanup and recovery. The cleanup and recovery plan shall be carried out by the permitholder under the supervision of the department or the district.

Source: Laws 1986, LB 284, § 31.

46-1132 Damage to premises; considered tort claim.

Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the district while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the Political Subdivisions Tort Claims Act. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the department while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the State Tort Claims Act.

Source: Laws 1986, LB 284, § 32.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.
State Tort Claims Act, see section 81-8,235.

46-1133 Assistance to abate water contamination.

Each district or the department may provide technical and other assistance as may be necessary or desirable to abate the risk of water contamination in the state caused by chemigation.

Source: Laws 1986, LB 284, § 33.

46-1134 Department; powers and duties.

The department shall have the power and duty:

- (1) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, industries, and groups in furtherance of the purposes of the Nebraska Chemigation Act; and
- (2) To receive or initiate complaints of water contamination, hold hearings in connection with water contamination, and institute legal proceedings in the name of the state for the control or prevention of water contamination.

Source: Laws 1986, LB 284, § 34.

46-1135 District; adopt rules and regulations.

Each district may adopt and promulgate such rules and regulations as shall be necessary to carry out its responsibilities under the Nebraska Chemigation Act. The rules and regulations of a district shall be subject to approval by the director.

Source: Laws 1986, LB 284, § 35.

46-1136 Council; adopt rules and regulations.

The council shall adopt and promulgate rules and regulations providing for:

- (1) Procedures and specifications for the installation, replacement, or repair of chemigation equipment;
- (2) A system for the issuance of permits by the district to engage in chemigation;
- (3) A procedure for a permitholder to follow when notifying the department and the appropriate district of any actual or suspected accident related to the use of chemigation;

- (4) A procedure for the review and approval of a cleanup and recovery plan for an accident related to the use of chemigation;
- (5) The posting of signs providing notice of the use of chemigation; and
- (6) Any other chemigation practices necessary to carry out the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 36.

46-1137 Compliance with act; affirmative defense.

Compliance with the Nebraska Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

Source: Laws 1986, LB 284, § 37.

46-1138 Violation of act; procedures for compliance; prosecuting attorney; duties.

(1) Any person found by the district to be in violation of the Nebraska Chemigation Act or any rules and regulations issued pursuant to the act shall be notified by the district of such violation. Each person so notified by the district shall have ten days in which to comply. The district shall make every reasonable effort to obtain voluntary compliance. Voluntary compliance shall not preclude the district, department, Attorney General, or county attorney from pursuing penalties in the proper court of law based on violations of the act or the rules and regulations. If after such ten-day period the violation has not been corrected, the district shall notify the department of the violation. The department shall make a preliminary investigation. If after such investigation the department determines that there is a violation of the act or rules and regulations, the district or the department shall either revoke the person's chemigation permit until such time as there is satisfactory compliance or issue an order suspending operation of the chemigation system until the required permit is obtained.

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

(3) If the violation of the Nebraska Chemigation Act occurs with respect to a permitted system, a schedule for compliance may be established by the district in lieu of the ten-day compliance requirement.

(4) It shall be the duty of the Attorney General or the county attorney of the county in which such violation occurs or is about to occur, when notified of such violation or threatened violation, to cause appropriate proceedings under this section to be instituted and pursued without delay.

Source: Laws 1986, LB 284, § 38; Laws 1989, LB 619, § 3.

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.

46-1144 District; failure to carry out responsibilities; hearing; procedure.

If at any time after January 1, 1988, it is alleged by the department upon its own initiative or as a result of a complaint being filed with the department that a district is not carrying out its responsibilities under the Nebraska Chemigation Act, the department may hold a contested case hearing. Notice of such hearing shall be published in such newspapers as are necessary to provide for general circulation within the district at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall inform the public as to the reasons for such hearing. The director shall receive evidence from all interested parties at the hearing. Each hearing conducted pursuant to this section shall be recorded, and such record shall be available for review.

Source: Laws 1986, LB 284, § 44.

46-1145 District; failure to carry out responsibilities; effect.

If after a hearing held pursuant to section 46-1144 the director determines that the district is not carrying out its responsibilities under the Nebraska Chemigation Act, the powers and duties of the district set out in the act shall vest in the department for a period of twelve months. All application fees shall be payable to the department during such twelve-month period and shall be placed in the Chemigation Costs Fund. Each district which has lost its powers and duties to the department shall, at least thirty days prior to the end of any such twelve-month period, inform the director as to whether it is now able to carry out its responsibilities under the Nebraska Chemigation Act or the reasons why it will continue to be unable to meet such responsibilities. If the district is unable to meet its responsibilities, the department may continue to

perform the powers and duties required of the district for an additional twelve-month period.

Source: Laws 1986, LB 284, § 45.

46-1146 Appeal; procedure.

Any affected person aggrieved by any order issued or final decision made by the department pursuant to the Nebraska Chemigation Act may appeal the order or decision, and the appeal shall be in accordance with the Administrative Procedure Act. As used in this section, affected person shall mean an applicant for a permit which is subject to an order or final decision of the department or district and any owner of an estate or interest in or concerning land whose interest is or may be impacted in a direct or significant manner by the order or final decision of the department or district.

Source: Laws 1986, LB 284, § 46; Laws 1988, LB 352, § 82.

Cross References

Administrative Procedure Act, see section 84-920.

46-1147 Powers of department; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of the department provided in Chapter 81, article 15.

Source: Laws 1986, LB 284, § 47.

46-1148 Powers of district; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of a district provided in the Nebraska Ground Water Management and Protection Act.

Source: Laws 1986, LB 284, § 48.

Cross References

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

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

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46-1201 Act, how cited.

Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Practice Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18; Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9; Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1; Laws 2007, LB463, § 1143; Laws 2021, LB148, § 57.

Operative date July 1, 2021.

46-1202 Purposes of act.

The purposes of the Water Well Standards and Contractors' Practice Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors, pump installation contractors, water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10; Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11; Laws 2007, LB463, § 1144.

46-1203 Definitions, where found.

For purposes of the Water Well Standards and Contractors' Practice Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19; Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11; Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3; Laws 2007, LB463, § 1145.

46-1204 Repealed. Laws 1993, LB 131, § 65.

46-1204.01 Abandoned water well, defined.

Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Environment and Energy, and (3) for which the notice of abandonment required by subsection (2) of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or licensed pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7; Laws 2007, LB296, § 207; Laws 2007, LB463, § 1146; Laws 2021, LB148, § 58.

Operative date July 1, 2021.

46-1204.02 Active status water well, defined.

Active status water well shall mean a water well which is in use and which is not an illegal water well.

Source: Laws 1994, LB 981, § 13.

46-1205 Board, defined.

Board means the Water Well Standards and Contractors' Licensing Board.

Source: Laws 1986, LB 310, § 5; Laws 2007, LB463, § 1147.

46-1205.01 Licensed natural resources ground water technician, defined.

Licensed natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the department indicating that he or she is a licensed natural resources ground water technician.

Source: Laws 2001, LB 133, § 4; Laws 2007, LB463, § 1148.

46-1206 Construction of water wells, defined.

Construction of water wells shall mean and include all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Source: Laws 1986, LB 310, § 6.

46-1206.01 Decommissioned, defined.

Decommissioned, when used in relation to a water well, shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the department.

Source: Laws 1994, LB 981, § 14.

46-1207 Department, defined.

Department means the Department of Environment and Energy.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265; Laws 2007, LB296, § 208; Laws 2021, LB148, § 59.
Operative date July 1, 2021.

46-1207.01 Illegal water well, defined; landowner; petition for reclassification; when.

(1) Illegal water well means any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard;

(f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98; Laws 2007, LB463, § 1149.

46-1207.02 Inactive status water well, defined.

Inactive status water well shall mean a water well that is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements:

(1) The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well;

(2) The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well;

(3) All entrances and discharge piping to the water well are effectively sealed to prevent the entrance of contaminants; and

(4) The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

Source: Laws 1994, LB 981, § 16; Laws 2004, LB 962, § 99.

46-1208 Installation of pumps and pumping equipment, defined.

Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Source: Laws 1986, LB 310, § 8; Laws 1993, LB 131, § 40; Laws 2006, LB 508, § 4.

46-1208.01 Person, defined.

Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Source: Laws 1996, LB 1241, § 4.

46-1208.02 Natural resources ground water technician, defined.

Natural resources ground water technician means any individual employed by a natural resources district and engaged in the inspection of chemigation systems, measuring and recording static water levels, inspection and servicing of flow meters, and water sampling practices and techniques. Natural resources ground water technician does not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; (2) a water well monitoring technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode.

Source: Laws 2001, LB 133, § 5.

46-1209 Licensed pump installation contractor, defined.

Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13; Laws 2007, LB463, § 1150.

46-1210 Licensed pump installation supervisor, defined.

Licensed pump installation supervisor means any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14; Laws 2007, LB463, § 1151.

46-1211 Pumps and pumping equipment, defined.

Pumps and pumping equipment shall mean any equipment or materials utilized or intended for use in withdrawing or obtaining ground water including, but not limited to, seals, tanks, fittings, and controls.

Source: Laws 1986, LB 310, § 11.

46-1212 Water well, defined.

Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or

injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation described in subdivisions (1)(b) and (1)(c) of section 46-601.01.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100; Laws 2007, LB701, § 24.

46-1213 Licensed water well contractor, defined.

Licensed water well contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15; Laws 2007, LB463, § 1152.

46-1214 Licensed water well drilling supervisor, defined.

Licensed water well drilling supervisor means any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16; Laws 2007, LB463, § 1153.

46-1214.01 Licensed water well monitoring technician, defined.

Licensed water well monitoring technician means any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17; Laws 2007, LB463, § 1154.

46-1215 Well repairs, defined.

Well repairs shall mean any change, replacement, or other alteration of any water well, pump, or pumping equipment or any other activity which requires a breaking or opening of the well seal.

Source: Laws 1986, LB 310, § 15.

46-1216 Well seal, defined.

Well seal shall mean an arrangement or device used to cap a water well or to establish and maintain a junction between the casing or curbing of a water well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the water well.

Source: Laws 1986, LB 310, § 16.

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.

46-1218 Board; terms; vacancy.

(1) The terms of members of the board appointed pursuant to subdivisions (1)(e) and (f) of section 46-1217 shall be extended by one year to five-year terms, and the successors to members appointed pursuant to subdivisions (1)(a) through (f) of such section shall be appointed for five-year terms. No appointed member shall be appointed to serve more than two consecutive full five-year terms.

(2) Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18; Laws 2007, LB463, § 1156.

46-1219 Board; meetings; quorum.

(1) Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board.

(2) A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19; Laws 2007, LB463, § 1157.

46-1219.01 Repealed. Laws 2007, LB 463, § 1319.

46-1220 Board; members; compensation; expenses; administration.

(1) Each member of the board shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of the duties of a member of the board, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. The compensation per day shall not exceed fifty dollars and shall be determined by the board with the approval of the department.

(2) The board may select one or more of its members to attend the annual meeting of the national organization of state boards of water well contractors or other related meetings. Any member so selected shall receive traveling and lodging expenses in attending such meetings on the same basis as provided in sections 81-1174 to 81-1177.

(3) The department shall be responsible for the general administration of the activities of the board. The cost of operation and administration of the board shall be paid from the General Fund and the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 2021, LB148, § 61.
Operative date July 1, 2021.

46-1221 Board; executive secretary; offices.

The department shall designate an individual with the approval of the board to serve as executive secretary of the board, and the department shall furnish such offices and materials as may be necessary for the efficient operation of the board.

Source: Laws 1986, LB 310, § 21.

46-1222 Board; members; conflict of interest.

No board member shall take any action or make any decision in the discharge of the duties of a member of the board that may constitute a conflict of interest. As soon as a member is aware of a potential conflict or should reasonably be aware of such potential conflict, whichever is sooner, the member shall submit a written statement to the Director of Environment and Energy describing the matter requiring action or decision and the nature of the potential conflict. The member shall take such action as the director shall advise or prescribe to remove the member from influence over the action or decision on the matter. For purposes of this section, conflict of interest includes financial, professional, or personal obligations that may compromise or present the appearance of compromising the judgment of a member in the performance of the duties of a member of the board. The director may establish a definition of conflicts of interest for members of the board and may establish procedures in case such a conflict arises.

Source: Laws 2021, LB148, § 60.
Operative date July 1, 2021.

46-1223 Examinations; requirements; fee; hardship licensing.

(1) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board.

(2) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within twelve months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(3) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8; Laws 2007, LB463, § 1159.

46-1223.01 Department; develop program.

The department shall develop a program that is designed to train individuals to become licensed natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours.

Source: Laws 2001, LB 133, § 7; Laws 2007, LB463, § 1160.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (3) and (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) The board shall set fees for licensing individuals under the Water Well Standards and Contractors' Practice Act for application for, issuance of, and renewal of licenses. The fees shall be waived for initial licenses for low-income individuals, military families, and young workers as those terms are defined in the Uniform Credentialing Act.

(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; Laws 2021, LB148, § 62.
Operative date July 1, 2021.

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.

Uniform Credentialing Act, see section 38-101.

46-1225 License renewal; continuing competency required.

The board shall adopt rules and regulations to establish continuing competency requirements for persons licensed under the Water Well Standards and Contractors' Practice Act. Continuing education is sufficient to meet continuing competency requirements.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2; Laws 2007, LB463, § 1162.

46-1226 Repealed. Laws 2007, LB 463, § 1319.**46-1227 Department; well and equipment standards; adopt rules and regulations.**

The department, with the approval of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a licensed water well contractor, a licensed pump installation contractor, a licensed water well drilling supervisor, a licensed pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18; Laws 2007, LB463, § 1163.

Cross References

Old wells not in use, duty to fill or decommission, see sections 54-311 and 54-315.

46-1227.01 Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.

(1) All water well construction and monitoring, pump and pumping equipment installation and repair, and decommissioning shall be accomplished following the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) A licensed water well contractor may have supervisory authority over all employees.

(3) A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over nonlicensed employees.

(4) A licensed pump installation contractor may have supervisory authority over all employees.

(5) A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over nonlicensed employees.

(6) A licensed water well monitoring technician may work independently and shall not have supervisory authority.

(7) A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any licensed or nonlicensed persons.

(8) An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his or her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

Source: Laws 2007, LB463, § 1158; Laws 2021, LB148, § 63.
Operative date July 1, 2021.

46-1228 Department; access and inspection; powers.

The department shall have (1) authority to inspect water wells constructed, water wells decommissioned, and water well locations, (2) access to water wells and accompanying pumps and pumping equipment at all reasonable times, and (3) power of inspection in regard to the construction and decommissioning of all water wells.

Source: Laws 1986, LB 310, § 28; Laws 2004, LB 962, § 101.

46-1229 License required; application; qualifications; existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated.

(1) Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department in accordance with rules and regulations adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223 and otherwise complies with the Water Well Standards and Contractors' Practice Act and all standards, rules, and regulations adopted and promulgated pursuant to the act. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination.

(2) The department, with the approval of the board, shall adopt and promulgate rules and regulations governing application for and issuance and renewal of licenses required pursuant to this section and fees pursuant to section 46-1224.

(3) All rules and regulations adopted prior to July 1, 2021, under the Uniform Credentialing Act and the Water Well Standards and Contractors' Practice Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2021, LB148.

(4) All licenses or other forms of approval issued prior to July 1, 2021, in accordance with the Uniform Credentialing Act and the Water Well Standards and Contractors' Practice Act shall remain valid as issued for purposes of the changes made by Laws 2021, LB148, unless revoked or otherwise terminated by law.

(5) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to July 1, 2021, under the Uniform Credentialing Act and the Water Well Standards and Contractors' Practice Act shall be subject to the provisions of the acts as they existed prior to July 1, 2021.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9; Laws 2007, LB463, § 1164; Laws 2021, LB148, § 64.
Operative date July 1, 2021.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1230 Licensees; proof of insurance.

Each applicant for an initial license as a licensed water well contractor or as a licensed pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest. Proof of insurance shall be maintained and submitted annually for the term of the active license.

Source: Laws 1986, LB 310, § 30; Laws 2007, LB463, § 1165.

46-1231 License; application; qualifications.

Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a license in his or her respective trade. A license shall be issued to every applicant who successfully passes the examination for such license and otherwise complies with the Water Well Standards and Contractors' Practice Act and all standards, rules, and regulations adopted and promulgated pursuant to the act. Any individual employed by a licensed water well contractor or a licensed pump installation contractor who is not deemed to qualify as a licensed water well drilling supervisor or licensed pump installation supervisor may apply for a license in his or her respective trade in the same manner as the licensed water well drilling supervisor or the licensed pump installation supervisor.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10; Laws 2007, LB463, § 1166; Laws 2021, LB148, § 65.
Operative date July 1, 2021.

46-1232 Repealed. Laws 2007, LB 463, § 1319.

46-1233 Water well construction or decommissioning; equipment installation or repair; supervision required.

(1) Any person constructing a water well, installing or repairing pumps onsite, or decommissioning a water well shall do such work in accordance with

the rules and regulations developed under the Water Well Standards and Contractors' Practice Act.

(2) A water well shall be constructed, pumps and pumping equipment shall be installed and repaired onsite, and water wells shall be decommissioned by a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor, except that an individual may construct a water well or install and repair pumps and pumping equipment onsite on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. No water well shall be opened or the seal broken by any person other than an owner of the water well unless (a) the opening or breaking of the seal is carried out by a licensed water well monitoring technician or a licensed natural resources ground water technician, (b) the opening or breaking of the seal is carried out by a licensed operator of a public water system in the course of his or her employment or someone under his or her supervision, or (c) a state electrical inspector in the course of his or her employment.

(3) For purposes of this section, supervision means the ready availability of the person licensed pursuant to the Water Well Standards and Contractors' Practice Act for consultation and direction of the activities of any person not licensed who assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20; Laws 2007, LB463, § 1167.

46-1233.01 Repealed. Laws 2007, LB 463, § 1319.

46-1234 Exploratory wells; agreement to decommission required; failure to plug; effect.

Any licensed water well contractor constructing a water well for any customer shall as a part of the agreement include the proper decommissioning of each water well constructed to explore for ground water pursuant to the agreement. Any failure to properly plug any such water well pursuant to such agreement shall subject him or her to suspension, revocation, or refusal of renewal of his or her license.

Source: Laws 1986, LB 310, § 34; Laws 1994, LB 981, § 19.

46-1235 License; disciplinary actions; grounds.

In cases other than those relating to failure to meet the requirements for an initial license, the Director of Environment and Energy may deny, refuse renewal of, suspend, or revoke licenses or may take other disciplinary action following notice and an opportunity for a hearing for any of the following acts or offenses:

- (1) Violation of the Water Well Standards and Contractors' Practice Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;
- (2) Fraud or deception by the applicant or licensee;
- (3) Failure to exercise reasonable care in the practice of the trade;

- (4) Inability to properly perform the practice of the trade;
- (5) Failure to comply with continuing education requirements for licensure under the act;
- (6) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;
- (7) Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;
- (8) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or
- (9) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47; Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21; Laws 2003, LB 245, § 8; Laws 2007, LB296, § 210; Laws 2007, LB463, § 1168; Laws 2021, LB148, § 66.

Operative date July 1, 2021.

46-1235.01 Repealed. Laws 2007, LB 463, § 1319.

46-1235.02 Repealed. Laws 2007, LB 463, § 1319.

46-1236 Repealed. Laws 2007, LB 463, § 1319.

46-1237 Repealed. Laws 2007, LB 463, § 1319.

46-1237.01 Repealed. Laws 2007, LB 463, § 1319.

46-1237.02 Repealed. Laws 2007, LB 463, § 1319.

46-1237.03 Repealed. Laws 2007, LB 463, § 1319.

46-1238 License; when required; action to enjoin activities.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Water Well Standards and Contractors' Practice Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24; Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22; Laws 2006, LB 508, § 7; Laws 2007, LB463, § 1169; Laws 2021, LB148, § 67.

Operative date July 1, 2021.

46-1239 Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such

activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8; Laws 2007, LB463, § 1170.

46-1240 Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.

Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24; Laws 2007, LB463, § 1171.

46-1240.01 False or forged documents; penalty.

Any person who files or attempts to file with the department any false or forged diploma or certificate or affidavit of identification or qualification shall be guilty of forgery.

Source: Laws 1993, LB 131, § 56.

46-1240.02 Repealed. Laws 2007, LB 463, § 1319.**46-1240.03 Repealed. Laws 2007, LB 463, § 1319.****46-1240.04 Repealed. Laws 2007, LB 463, § 1319.****46-1240.05 Repealed. Laws 2007, LB 463, § 1319.****46-1240.06 Variance from rule, regulation, or standard; conditions; injunction.**

(1) The department may grant a variance from any rule, regulation, or standard adopted and promulgated by the department relating to the construction of water wells upon proof by a licensed water well contractor or owner of a proposed water well satisfactory to the department that the enforcement of the rule, regulation, or standard would create an unreasonable hardship or be unreasonable, impractical, or not feasible under the circumstances. A variance may be under such terms and conditions and for such time as the department may prescribe. The terms and conditions of a variance may include testing, monitoring, reporting, and additional construction or installation requirements.

(2) A variance shall be limited to the construction of a water well to replace an existing water well.

(3) Any person who owns or operates a water well in violation of the terms and conditions of a variance may be enjoined from continuing such activities. The injunction may include an order to properly decommission the water well.

Source: Laws 1993, LB 131, § 61; Laws 1994, LB 981, § 21.

46-1241 Water well log required; contents.

Any owner of a water well or a licensed water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

- (1) Legal description of the water well;
- (2) Description and depth of geologic materials encountered;
- (3) Depth and diameter or dimension of constructed water well and test hole;
- (4) Depth and diameter or dimension of excavated hole if applicable;
- (5) Depth of formation stabilizer or gravel pack and size of particles if used;
- (6) Depth and thickness of grout or other sealing material if applicable;
- (7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;
- (8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

- (9) Static water level;
- (10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;
- (11) Yield of water well in gallons per minute or gallons per hour if applicable;
- (12) Signature of water well contractor;
- (13) Dates drilling commenced and construction completed;
- (14) Intended use of the water well;
- (15) Name and address of the owner;
- (16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;
- (17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Practice Act of any person, other than the owner of the water well, who constructed the water well; and
- (18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25; Laws 2007, LB463, § 1172.

ARTICLE 13

WATER QUALITY MONITORING

Cross References

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

Section

- 46-1301. Legislative findings.
- 46-1302. Repealed. Laws 2004, LB 940, § 4.
- 46-1303. Repealed. Laws 2004, LB 940, § 4.
- 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.

46-1302 Repealed. Laws 2004, LB 940, § 4.

46-1303 Repealed. Laws 2004, LB 940, § 4.

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 14

DECOMMISSIONING WATER WELLS

Section

- 46-1401. Legislative findings and intent.
- 46-1402. Definitions, where found.
- 46-1403. Water Well Decommissioning Fund; created; use; investment.
- 46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.
- 46-1405. Natural resources district; cost-sharing program; qualification for funding.

46-1401 Legislative findings and intent.

The Legislature finds that accelerating the decommissioning of illegal water wells will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that completing such decommissioning can be most appropriately accomplished by accelerating state financial input into the efforts currently being conducted. It is therefor the intent of the Legislature to embark upon an accelerated program for the decommissioning of Nebraska's illegal water wells and to recommend that the State of Nebraska and the Legislature annually appropriate ninety-nine thousand dollars from the General Fund to carry out this accelerated program during the years required for its completion.

Source: Laws 1994, LB 981, § 2; Laws 2000, LB 900, § 237.

46-1402 Definitions, where found.

For purposes of sections 46-1401 and 46-1403 to 46-1405, the definitions found in sections 46-1206.01, 46-1207.01, 46-1209, 46-1212, and 46-1213 shall be used.

Source: Laws 1994, LB 981, § 5.

46-1403 Water Well Decommissioning Fund; created; use; investment.

There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 46-1401 to 46-1405 such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property

received by the Department of Natural Resources from any source, federal, state, public, or private, to be used by the department for the purpose of accelerating the decommissioning of illegal water wells. The department shall allocate money from the fund for purposes of sections 46-1401 to 46-1405. The fund shall be exempt from provisions relating to lapsing of appropriations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Well Decommissioning 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 1994, LB 981, § 3; Laws 1995, LB 7, § 44; Laws 2000, LB 900, § 238; Laws 2009, First Spec. Sess., LB3, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

46-1404 Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405 Natural resources district; cost-sharing program; qualification for funding.

Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

- (1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;
- (2) Applies to all water wells in the district;
- (3) Is available for at least thirty water wells per year; and

(4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of five hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

ARTICLE 15

WELLHEAD PROTECTION AREA ACT

Section

- 46-1501. Act, how cited.
- 46-1502. Terms, defined.
- 46-1503. Wellhead protection area; designation.
- 46-1504. Wellhead protection area designation; controlling entity; duties.
- 46-1505. Proposed wellhead protection area; public notice and comment.
- 46-1506. Boundaries of wellhead protection area; designation; procedure.
- 46-1507. Existing wellhead protection areas; effect of act.
- 46-1508. Designated wellhead protection area; boundary area changes.
- 46-1509. Environmental Quality Council; rules and regulations.

46-1501 Act, how cited.

Sections 46-1501 to 46-1509 shall be known and may be cited as the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 2.

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.

46-1503 Wellhead protection area; designation.

Any controlling entity may designate a wellhead protection area and adopt controls pursuant to the Wellhead Protection Area Act for the purpose of protecting the public water supply system. The department shall provide technical assistance to any controlling entity designating a wellhead protection area and adopting controls pursuant to the act.

Source: Laws 1998, LB 1161, § 4.

46-1504 Wellhead protection area designation; controlling entity; duties.

Any controlling entity proposing to designate a wellhead protection area and adopt controls shall:

(1) Designate the boundaries of the wellhead protection area following the procedure in section 46-1505. The wellhead protection area shall be based on all reasonably available hydrogeologic information on ground water flow, recharge, and discharge and other related information necessary to adequately determine the wellhead protection area for the purposes stated in this section;

(2) Identify within each proposed wellhead protection area all potential sources of contaminants which may have any adverse effect on the health of persons;

(3) Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from such contaminants;

(4) Include contingency plans for the location and provision of alternate drinking water supplies for each affected public water supply system in the event of water well or well field contamination by such contaminants; and

(5) Propose the controls necessary to provide protection from contaminants which may have any adverse effect on the health of persons served by the public water supply system of each participating controlling entity.

Source: Laws 1998, LB 1161, § 5.

46-1505 Proposed wellhead protection area; public notice and comment.

The controlling entity shall publicize proposed boundaries for the wellhead protection area and the proposed controls and shall provide time for public comment at one or more regularly scheduled public meetings of the governing board of the controlling entity. Notice of the time for public comment shall be published in conjunction with notice of such regularly scheduled meeting. A description of the proposed boundaries and the text of the proposed controls shall be available at the office of the controlling entity for thirty days before such meeting. Persons shall be given the opportunity to speak on the proposed designation and the proposed controls or to submit written testimony for consideration by the controlling entity.

Source: Laws 1998, LB 1161, § 6.

46-1506 Boundaries of wellhead protection area; designation; procedure.

Within sixty days after the last time for public comment under section 46-1505, the controlling entity shall make a final designation of the boundaries of the wellhead protection area and the controls necessary to protect the water in the wellhead protection area and shall submit them to the director for approval or disapproval. Such approval shall be based on whether the bound-

aries of the wellhead protection area are reasonably defined, the controls are reasonably related to the purpose of ground water protection in the area, and such approval is in the public interest. The director shall act on the proposed designation of boundaries and proposed controls within ninety days after the date the proposals are received by him or her.

If the director approves the proposed boundaries and controls, he or she shall so notify the controlling entity, but the boundaries and controls shall not be deemed effective until the controlling entity has adopted such boundaries and controls by ordinance or resolution. If the director disapproves either or both of the proposals, he or she shall return the proposals to the controlling entity with an explanation of the reasons for such disapproval. The controlling entity may revise such proposed designation of boundaries and proposed controls and, after notice and hearing as provided for in the original proposed designation of boundaries and proposed controls, submit the revised proposed designation of boundaries and proposed controls to the director for approval or disapproval.

If the director does not act on either the original or revised proposed designation of boundaries and proposed controls within ninety days after submission by the controlling entity, the proposed designation of boundaries and proposed controls shall be deemed approved by the director.

Source: Laws 1998, LB 1161, § 7.

46-1507 Existing wellhead protection areas; effect of act.

Any wellhead protection area established before July 15, 1998, by resolution or ordinance of the controlling entity need not be reestablished under the Wellhead Protection Area Act unless controls are proposed. If such controls are proposed, the controls and the boundaries of the wellhead protection area are subject to the requirements of sections 46-1504 to 46-1506. Any wellhead protection area purported to have been established before July 15, 1998, other than by official action of a controlling entity shall be null and void beginning nine calendar months after July 15, 1998, unless reestablished by resolution or ordinance of the controlling entity.

Source: Laws 1998, LB 1161, § 8.

46-1508 Designated wellhead protection area; boundary area changes.

A designated wellhead protection area may be amended as to boundaries and controls as provided for in the initial designation of a wellhead protection area in the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 9.

46-1509 Environmental Quality Council; rules and regulations.

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 10.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1601. Act, how cited.

46-1602. Definitions, where found.

SAFETY OF DAMS AND RESERVOIRS ACT

- Section
- 46-1603. Abandonment, defined.
 - 46-1604. Adverse consequences, defined.
 - 46-1605. Alterations, defined.
 - 46-1606. Application approval, defined.
 - 46-1607. Approval to operate, defined.
 - 46-1608. Appurtenant works, defined.
 - 46-1609. Breach, defined.
 - 46-1610. Completion certification, defined.
 - 46-1611. Dam, defined.
 - 46-1612. Days, defined.
 - 46-1613. Department, defined.
 - 46-1614. Director, defined.
 - 46-1615. Emergency, defined.
 - 46-1616. Engineer, defined.
 - 46-1617. Enlargement, defined.
 - 46-1618. Hazard potential classification, defined.
 - 46-1619. High hazard potential, defined.
 - 46-1620. Incremental, defined.
 - 46-1621. Low hazard potential, defined.
 - 46-1622. Maximum storage, defined.
 - 46-1623. Minimal hazard potential, defined.
 - 46-1624. Normal storage, defined.
 - 46-1625. Owner, defined.
 - 46-1626. Person, defined.
 - 46-1627. Probable, defined.
 - 46-1628. Probable maximum flood, defined.
 - 46-1629. Reconstruction, defined.
 - 46-1630. Removal, defined.
 - 46-1631. Reservoir, defined.
 - 46-1632. Significant hazard potential, defined.
 - 46-1633. Storage elevation, defined.
 - 46-1634. Top of dam elevation, defined.
 - 46-1635. Purposes of act.
 - 46-1636. Applicability of other law.
 - 46-1637. Regulation by political subdivisions; restrictions; conditions.
 - 46-1638. Plans and specifications; responsibility of engineer.
 - 46-1639. Immunity from liability; when.
 - 46-1640. Orders and approval; effect.
 - 46-1641. Change of ownership; notification.
 - 46-1642. Livestock waste control facility; approvals required.
 - 46-1643. Administrative or judicial recourse; not affected.
 - 46-1644. Department; employ personnel.
 - 46-1645. Consulting board required; when; liability for costs.
 - 46-1646. Dams; review and approval required; when.
 - 46-1647. Potentially hazardous dams; emergency action plans.
 - 46-1648. Right of entry upon private property; when; immunity.
 - 46-1649. Department; investigations and studies.
 - 46-1650. Department; enforcement; powers.
 - 46-1651. Rules and regulations.
 - 46-1652. Construction or enlargement of dam; application for approval; contents.
 - 46-1653. Modifications to existing dam; application for approval; contents; exemption.
 - 46-1654. Application approval; issuance; public hearing; notice to department; when.
 - 46-1655. Fees.
 - 46-1656. Dam Safety Cash Fund; created; use; investment.
 - 46-1657. New or modified dam; owner; filing requirements; approval to operate; issuance.
 - 46-1658. Alteration of dam; owner; filing requirements; approval to operate; issuance.
 - 46-1659. Removal, breach, or abandonment of dam; design engineer; duties; department; powers.
 - 46-1660. Approval to operate; department; powers; hearing; notice.
 - 46-1661. Complaint; department; duties; unsafe condition; modification.

Section

- 46-1662. Periodic inspections; when; department; powers and duties.
- 46-1663. Record-keeping requirements; maintenance, operation, and inspection; department; powers.
- 46-1664. Safety inspections; when; department; powers and duties.
- 46-1665. Emergency actions involving a dam; owner; duties; department; duties.
- 46-1666. Violations; penalties.
- 46-1667. Notice of violation; orders; procedure.
- 46-1668. Violations; civil penalty.
- 46-1669. Appeal.
- 46-1670. Existing unapproved dams; requirements.

46-1601 Act, how cited.

Sections 46-1601 to 46-1670 shall be known and may be cited as the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 1.

46-1602 Definitions, where found.

For purposes of the Safety of Dams and Reservoirs Act, the definitions found in sections 46-1603 to 46-1634 apply.

Source: Laws 2005, LB 335, § 2.

46-1603 Abandonment, defined.

Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

Source: Laws 2005, LB 335, § 3.

46-1604 Adverse consequences, defined.

Adverse consequences means negative impacts that may occur upstream, downstream, or at locations remote from the dam, including, but not limited to, loss of human life, economic loss including property damage, and lifeline disruption.

Source: Laws 2005, LB 335, § 4.

46-1605 Alterations, defined.

Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the department, but does not include maintenance and repair of the dam to retain its initial structural integrity.

Source: Laws 2005, LB 335, § 5.

46-1606 Application approval, defined.

Application approval means authorization in writing issued by the department to an owner who has applied to the department for permission to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

Source: Laws 2005, LB 335, § 6.

46-1607 Approval to operate, defined.

Approval to operate means authorization in writing issued by the department to an owner who has completed construction, reconstruction, enlargement, or alteration of a dam.

Source: Laws 2005, LB 335, § 7.

46-1608 Appurtenant works, defined.

Appurtenant works include, but are not limited to: Structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

Source: Laws 2005, LB 335, § 8.

46-1609 Breach, defined.

Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Source: Laws 2005, LB 335, § 9.

46-1610 Completion certification, defined.

Completion certification means a statement signed by the design engineer, certifying the completion of work on a dam in conformance with the approved plans and specifications.

Source: Laws 2005, LB 335, § 10.

46-1611 Dam, defined.

(1) Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

(2) Dam does not include:

- (a) An obstruction in a canal used to raise or lower water;
- (b) A fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department;
- (c) Canals, including the diversion structure, and levees; or
- (d) Water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Source: Laws 2005, LB 335, § 11.

46-1612 Days, defined.

Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

Source: Laws 2005, LB 335, § 12.

46-1613 Department, defined.

Department means the Department of Natural Resources.

Source: Laws 2005, LB 335, § 13.

46-1614 Director, defined.

Director means the Director of Natural Resources.

Source: Laws 2005, LB 335, § 14.

46-1615 Emergency, defined.

Emergency includes, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam that may be construed as unsafe or threatening to life.

Source: Laws 2005, LB 335, § 15.

46-1616 Engineer, defined.

Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Source: Laws 2005, LB 335, § 16.

Cross References

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

46-1617 Enlargement, defined.

Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

Source: Laws 2005, LB 335, § 17.

46-1618 Hazard potential classification, defined.

Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including, but not limited to, safety, structural integrity, or flood routing capacity.

Source: Laws 2005, LB 335, § 18.

46-1619 High hazard potential, defined.

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Source: Laws 2005, LB 335, § 19.

46-1620 Incremental, defined.

Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

Source: Laws 2005, LB 335, § 20.

46-1621 Low hazard potential, defined.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Source: Laws 2005, LB 335, § 21.

46-1622 Maximum storage, defined.

Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

Source: Laws 2005, LB 335, § 22.

46-1623 Minimal hazard potential, defined.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

Source: Laws 2005, LB 335, § 23.

46-1624 Normal storage, defined.

Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Source: Laws 2005, LB 335, § 24.

46-1625 Owner, defined.

Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam:

- (1) The United States Government and its departments, agencies, and bureaus;
- (2) The state and its departments, institutions, agencies, and political subdivisions;
- (3) A municipal or quasi-municipal corporation;
- (4) A public utility;
- (5) A district;
- (6) A person;
- (7) A duly authorized agent, lessee, or trustee of any person or entity listed in this section; and

(8) A receiver or trustee appointed by a court for any person or entity listed in this section.

Source: Laws 2005, LB 335, § 25.

46-1626 Person, defined.

Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

Source: Laws 2005, LB 335, § 26.

46-1627 Probable, defined.

Probable means likely to occur and reasonably expected.

Source: Laws 2005, LB 335, § 27.

46-1628 Probable maximum flood, defined.

Probable maximum flood means the most severe flood that is considered probable at a site.

Source: Laws 2005, LB 335, § 28.

46-1629 Reconstruction, defined.

Reconstruction means partial or complete removal and replacement of an existing dam.

Source: Laws 2005, LB 335, § 29.

46-1630 Removal, defined.

Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

Source: Laws 2005, LB 335, § 30.

46-1631 Reservoir, defined.

Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

Source: Laws 2005, LB 335, § 31.

46-1632 Significant hazard potential, defined.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Source: Laws 2005, LB 335, § 32.

46-1633 Storage elevation, defined.

Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

Source: Laws 2005, LB 335, § 33.

46-1634 Top of dam elevation, defined.

Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of foundation and embankment.

Source: Laws 2005, LB 335, § 34.

46-1635 Purposes of act.

The purposes of the Safety of Dams and Reservoirs Act are to regulate all dams and associated reservoirs for the protection of public health, safety, and welfare and to minimize the adverse consequences associated with the potential failure of such dams and reservoirs.

Source: Laws 2005, LB 335, § 35.

46-1636 Applicability of other law.

The Safety of Dams and Reservoirs Act does not relieve the owner or operator of a dam or reservoir from obtaining any necessary approvals from the department under sections 46-233 to 46-241 or from any other local, state, or federal regulatory authority.

Source: Laws 2005, LB 335, § 36.

46-1637 Regulation by political subdivisions; restrictions; conditions.

(1) Except as provided in subsections (2) and (4) of this section, no city, village, or county may, by ordinance or resolution enacted by the legislative body thereof or adopted by the people, (a) regulate, supervise, or provide for the regulation or supervision of any dams and associated reservoirs or the construction, reconstruction, enlargement, repair, alteration, operation, breach, removal, or abandonment thereof or (b) limit the size or the impounding capacity of a dam if such action would conflict with the power and authority vested in the department pursuant to the Safety of Dams and Reservoirs Act.

(2) A city, village, or county may adopt ordinances or resolutions (a) regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that are not within the state's jurisdiction and are not subject to regulation, owned, or operated by another public agency or body or (b) which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to, roads and fences.

(3) A city, village, or county may institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if a breach-inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting such overlay zoning.

(4) The Safety of Dams and Reservoirs Act does not preempt or supersede any local zoning ordinances, resolutions, rules, or regulations regarding special use permits enacted by a political subdivision with respect to permit applications for livestock waste control facilities.

Source: Laws 2005, LB 335, § 37.

46-1638 Plans and specifications; responsibility of engineer.

All plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams and supervision of construction shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.

Source: Laws 2005, LB 335, § 38.

46-1639 Immunity from liability; when.

(1) No action shall be brought against the state, the department, or its agents or employees for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation thereof pursuant to the Safety of Dams and Reservoirs Act, including, but not limited to, any of the following:

(a) Design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment;

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam;

(c) Control and regulation of the dam;

(d) Measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or

(e) Failure to act.

(2) The Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Source: Laws 2005, LB 335, § 39.

46-1640 Orders and approval; effect.

The findings and orders of the department, an application approval, and an approval to operate any dam issued by the department are final, conclusive, and binding upon all owners and state agencies, regulatory or otherwise, as to the safety of design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam.

The department may report all dam incidents as defined by the National Performance of Dams Program to the National Performance of Dams Program archive.

Source: Laws 2005, LB 335, § 40.

46-1641 Change of ownership; notification.

The owner of any dam subject to the Safety of Dams and Reservoirs Act shall notify the department of any change in the ownership of the dam. Notification

shall be in such form and include such evidence of ownership as the director may by rule and regulation require.

Source: Laws 2005, LB 335, § 41.

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.

46-1643 Administrative or judicial recourse; not affected.

The Safety of Dams and Reservoirs Act does not deprive the owner of any administrative or judicial recourse to the courts to which such owner is entitled under the laws of this state.

Source: Laws 2005, LB 335, § 43.

46-1644 Department; employ personnel.

The department shall employ an engineer and such individuals otherwise qualified by training and experience in the design, inspection, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams as necessary to carry out the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 44.

46-1645 Consulting board required; when; liability for costs.

When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested in writing by the owner, the department shall appoint a consulting board of three or more consultants to report to the department on the safety features involved. The cost and expense of a consulting board, if appointed at the request of an owner, shall be paid by the owner.

Source: Laws 2005, LB 335, § 45.

46-1646 Dams; review and approval required; when.

(1) The department shall review and approve the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property as provided in the Safety of Dams and Reservoirs Act.

(2) No person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval by the department.

(3) An owner of a dam who has entered into a cooperative agreement with the department pursuant to subdivision (2)(d) of section 46-1663 shall be deemed to be in compliance with the act.

Source: Laws 2005, LB 335, § 46.

46-1647 Potentially hazardous dams; emergency action plans.

(1) In order to protect life and property, the owner of every high hazard potential dam shall develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dam. In order to protect life and property, the department may require the owners of any significant hazard potential dam to develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dams.

(2) Such emergency action plan shall include, but not be limited to, the following elements:

- (a) Emergency notification plan with flowchart;
- (b) A statement of purpose;
- (c) A project description;
- (d) Emergency detection, evaluation, and classification;
- (e) General responsibilities;
- (f) Preparedness;
- (g) Inundation maps or other acceptable description of the inundated area; and
- (h) Appendices.

(3) For purposes of evaluating the adequacy of an emergency action plan, the department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted under this section. The department shall accept emergency action plans developed for dams under a federal dam safety program.

(4) If the department determines that a dam constitutes an immediate risk to life or property, the department shall order the owner to take such action as is necessary to remove such risk.

Source: Laws 2005, LB 335, § 47.

46-1648 Right of entry upon private property; when; immunity.

In making any investigation or inspection necessary to enforce or implement the Safety of Dams and Reservoirs Act, the department or its representatives, upon reasonable notice, may enter upon private property of the dam and reservoir owner as necessary. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable for prosecution for trespass when performing their official duties.

Source: Laws 2005, LB 335, § 48.

46-1649 Department; investigations and studies.

(1) The department may investigate and gather or cause the owner to gather such data, including advances made in safety practices elsewhere, as may be

needed for a proper review and study of the various features of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams.

(2) The department may make or cause the owner to make such watershed investigations and studies as are necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam.

(3) The department may make or cause the owner to make such seismic investigations and studies as may be necessary to keep abreast of developments affecting seismic stability of a dam.

Source: Laws 2005, LB 335, § 49.

46-1650 Department; enforcement; powers.

(1) The department may take any administrative or legal action necessary for the enforcement of the Safety of Dams and Reservoirs Act.

(2) An action or proceeding under this section may be initiated whenever any owner or any person acting as an agent of any owner:

(a) Fails to comply with the requirements imposed by the act or by any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act; or

(b) Commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act.

(3) Any action or proceeding under this section shall be initiated either administratively or in a court in a jurisdiction in which:

(a) The dam, area of hazard potential, or some part thereof exists;

(b) The person named in the complaint has its principal place of business; or

(c) The person named in the complaint resides.

Source: Laws 2005, LB 335, § 50.

46-1651 Rules and regulations.

(1) The department may adopt and promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, abandonment, and periodic testing of emergency action plans of dams to carry out the purposes of the Safety of Dams and Reservoirs Act. Such rules and regulations may also include, but are not limited to, establishing:

(a) Standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) Requirements for operation of dams, including operational plans to be prepared and implemented by owners;

(c) Requirements for monitoring, inspection, and reporting of conditions affecting the safety of dams; and

(d) Requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

(2) In adopting rules and regulations applicable to dams which may have a high hazard potential or a significant hazard potential, the department may consider:

(a) The state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) The economic impact of a failure of a structure upon the state and its citizens; and

(c) The relationship of dams in hydrologic management in the watershed as a whole.

Source: Laws 2005, LB 335, § 51.

46-1652 Construction or enlargement of dam; application for approval; contents.

(1) Construction of any new dam or the enlargement of any dam shall not commence until the owner has applied for and obtained from the department written application approval of plans and specifications.

(2) A separate application for each dam shall be filed with the department upon forms provided by the department. Plans and specifications signed and sealed by the design engineer shall accompany the application.

(3) The application shall provide the following information:

(a) The name and address of the owner;

(b) The name and address of the applicant, if different from the owner;

(c) The name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;

(d) The location, type, size, purpose, and height of the proposed dam;

(e) The reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;

(f) Plans for proposed permanent instrument installations in the dam;

(g) The area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimates, if available;

(h) Maps and design drawings showing plans, elevations, and sections of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analyses, to determine safety, adequacy, and suitability of design;

(i) The estimated construction cost of the dam; and

(j) Such other pertinent information as the department requires.

(4) The department may, when in its judgment it is necessary, also require the following:

(a) Data concerning subsoil and rock foundation conditions and the materials involved in the construction of the dam;

(b) Investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;

(c) Investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and

(d) Other appropriate information.

(5) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

Source: Laws 2005, LB 335, § 52.

46-1653 Modifications to existing dam; application for approval; contents; exemption.

(1) Before commencing the reconstruction or alteration of a dam or the abandonment, breach, or removal of a dam so that it no longer constitutes a dam, the owner shall file an application and secure the written application approval of the department.

(2) The application shall give such pertinent information or data concerning the dam as may be required by the department.

(3) The application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval.

(4) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

(5) In case of an emergency in which the department declares that repairs or breaching of the dam are necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner or by the department at the owner's expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner.

(6) The proposed repairs or breaching shall conform to any orders issued by the department.

Source: Laws 2005, LB 335, § 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.

46-1655 Fees.

(1) The application for approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam shall be accompanied by a filing fee as established by rule and regulation of the department but not to exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height.

(2) Only one filing fee shall be collected for an enlargement by flashboards, sandbags, earthen levees, gates, or other works, devices, or obstructions which are from time to time to be removed and replaced or opened and shut and thereby operated so as to vary the surface elevation of the reservoir.

(3) A dam subject to the Safety of Dams and Reservoirs Act and for which plans and specifications have been approved prior to September 4, 2005, shall not be required to pay any additional fee or submit an additional application for approval unless such dam requires reconstruction, enlargement, alteration, breach, removal, or abandonment.

(4) An application shall not be considered by the department until the filing fee is received.

(5) Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Dam Safety Cash Fund.

Source: Laws 2005, LB 335, § 55.

46-1656 Dam Safety Cash Fund; created; use; investment.

The Dam Safety Cash Fund is created. The fund shall consist of fees credited pursuant to section 46-1655 and any money specifically appropriated to the fund by the Legislature. Money in the fund shall not be subject to any fiscal-

year limitation or provision for lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department. Money in the fund may be expended by the department for costs incurred by the department in the administration of the Safety of Dams and Reservoirs Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 335, § 56.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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.

46-1658 Alteration of dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of the alteration of any dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer, showing or describing the work as actually completed.

(2) An approval to operate shall be issued upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner of the dam shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

Source: Laws 2005, LB 335, § 58.

46-1659 Removal, breach, or abandonment of dam; design engineer; duties; department; powers.

(1) Upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification.

(2) Before final approval of the removal of a dam is issued, the department may inspect the site of the work and determine that all work was accomplished in substantial conformance with the application approval.

(3) Following the removal of a dam, the department may report such removal to the National Performance of Dams Program and to the National Inventory of Dams.

Source: Laws 2005, LB 335, § 59.

46-1660 Approval to operate; department; powers; hearing; notice.

(1) Each approval to operate issued by the department under the Safety of Dams and Reservoirs Act shall contain such terms and conditions as the department may prescribe.

(2) The department shall revoke, suspend, or amend any approval to operate whenever it determines that the dam constitutes a danger to life and property.

(3) Before any approval to operate is revoked by the department, the department shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed to the owner at least thirty days before the date set for the hearing. Any interested persons may appear at the hearing and present their views and objections to the proposed action.

Source: Laws 2005, LB 335, § 60.

46-1661 Complaint; department; duties; unsafe condition; modification.

(1) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department shall cause an inspection and investigation to be made unless the data, records, and inspection reports on file are found adequate to make a determination whether the complaint is valid. The complainant shall be provided with a copy of the official report of the inspection and investigation.

(2) If it is found that an unsafe condition exists, the department shall notify the owner of the dam to take such action as is necessary to correct the condition, including breaching or removal of any dam found to be beyond repair.

Source: Laws 2005, LB 335, § 61.

46-1662 Periodic inspections; when; department; powers and duties.

(1) During the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans and specifications. The department shall require the owner to direct the design engineer to provide adequate supervision during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment and to provide sufficient information to enable the department to determine that conformity with the approved plans and specifications is being attained.

(2) If, after any inspection or investigation, during the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam or at any time prior to issuance of an approval to operate, it is found by the department that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise his or her plans and specifications. The owner may, pursuant to section 46-1645, request an independent consulting board to review the order of the department.

(3) If at any time during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department finds that the work is not being done in accordance with the approved plans and specifications, the department shall deliver a written notice of noncompliance to the owner. The notice shall be delivered by registered mail or by personal service to the owner, shall state the particulars in which the approved plans and specifications are not being or have not been complied with, and shall order immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and approved by the department.

(4) Failure to comply with the notice delivered under subsection (3) of this section may cause revocation of application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

Source: Laws 2005, LB 335, § 62.

46-1663 Record-keeping requirements; maintenance, operation, and inspection; department; powers.

(1) The department shall require owners to keep original records and any modifications to construction available and in good order.

(2) The department may:

(a) Adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;

(b) Require engineering and geologic investigations to safeguard life and property;

(c) Accept approvals and reports of equivalent inspections prepared for dams under a federal dam safety program; and

(d) Enter into cooperative agreements with the owners of dams which are required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 63.

46-1664 Safety inspections; when; department; powers and duties.

(1) The department shall inspect dams for the purpose of determining their safety. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, and every five years for low hazard potential dams and every five years or more for minimal hazard potential dams. The department may vary the inspection frequency of some sites based on an evaluation of the site performance history. The department may conduct additional inspections at any time. If serious safety concerns

are found by the department during the inspections, the department shall require the owner to conduct tests and investigations sufficient for the department to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal, or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam.

(2) The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.

Source: Laws 2005, LB 335, § 64.

46-1665 Emergency actions involving a dam; owner; duties; department; duties.

(1) The owner of a dam has the primary responsibility for determining when an emergency exists. When the owner of a dam determines that an emergency exists involving a dam, the owner shall immediately implement the emergency action plan as required pursuant to section 46-1647. The owner shall immediately notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if, in its judgment, either:

(a) The condition of any dam is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods or any other condition threatens the safety of any dam.

(2) In applying the remedial means provided for in this section, the department may in an emergency, with its own forces or by other means at its disposal, do any or all of the following:

(a) Take full charge and control of any dam;

(b) Lower the water level by releasing water from the reservoir;

(c) Completely drain the reservoir;

(d) Perform any necessary remedial or protective work at the site; or

(e) Take such other steps as may be essential to safeguard life and property.

(3) The department shall continue in full charge and control of such dam and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take back full charge and control. The department's taking full charge and control under this section does not relieve the owner of such dam of liability for any negligent acts of such owner.

(4) The department may report emergency actions involving the safety of a dam to the National Performance of Dams Program in a timely manner.

Source: Laws 2005, LB 335, § 65.

46-1666 Violations; penalties.

(1) Violation of the Safety of Dams and Reservoirs Act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act is a Class V misdemeanor. Each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the act commits a Class IV misdemeanor.

(3) Any owner or any person who engages in the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam or who knowingly does work on or permits work to be done on the dam without the approval of the department or in violation of the act and who fails to immediately notify the department thereof commits a Class V misdemeanor.

Source: Laws 2005, LB 335, § 66.

46-1667 Notice of violation; orders; procedure.

(1) If the department has reason to believe that an owner or other person is violating or has violated the Safety of Dams and Reservoirs Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department issued or adopted pursuant to the act, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the act. The owner or other person shall have thirty days from the mailing of such notice to respond or to request a hearing before the department as to why the owner or other person should not be ordered to cease and desist from the violation. The notice shall inform the owner or other person how to request the hearing and the consequences of failure to request a hearing.

(2) If the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam without having first obtained the required application approval, the department shall issue a temporary order for the owner or person to cease and desist the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment pending final action by the department pursuant to subsection (3) of this section. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated.

(3) After a response to a notice or a hearing pursuant to subsection (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a decision and final order. The decision and final order may take such form as the department determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected may appeal the hearing decision as provided in section 61-207.

(4) If the owner or person continues the violation after the department has issued a final decision and order pursuant to subsection (3) of this section or a temporary order pursuant to subsection (2) of this section, the department may apply for a temporary restraining order or preliminary or permanent injunction

from a court of competent jurisdiction. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

Source: Laws 2005, LB 335, § 67.

46-1668 Violations; civil penalty.

(1) Any person who violates the Safety of Dams and Reservoirs Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day for each day the violation continues.

(2) The department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurred.

(3) In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Source: Laws 2005, LB 335, § 68.

46-1669 Appeal.

Any affected person aggrieved by any final order or decision made by the director pursuant to the Safety of Dams and Reservoirs Act may appeal the order as provided in section 61-207. For purposes of this section, affected person means the applicant or holder of any approvals under the act and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by such final order or decision.

Source: Laws 2005, LB 335, § 69.

46-1670 Existing unapproved dams; requirements.

(1) Every owner of a dam subject to the Safety of Dams and Reservoirs Act that was completed prior to September 4, 2005, and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam.

(2) A separate application for each dam shall be filed with the department upon forms supplied by the department and shall include such appropriate information concerning the dam as the department requires.

(3) The department may give notice, by certified mail to the owner's last address of record in the office of the county assessor of the county in which the dam is located, to the owner of dams required under this section to file an application who or which have failed to do so, and a failure to file within sixty days after receipt of such notice shall be punishable as provided in the act.

(4) The department may make inspections of such dams and may require owners of such dams and reservoirs to perform, at the owner's expense, such work or tests as may reasonably be required to disclose information sufficient to enable the department to determine whether to issue an approval to operate or to issue orders directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the department may require an owner to lower the water level of or to drain the reservoir.

(5) If, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued.

(6) If at any time the department finds that the dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. Written notice of the time and place of the hearing shall be mailed, at least thirty days prior to the date set for the hearing, to the owner. Any interested person may appear at the hearing and present his or her views and objections to the proposed action.

Source: Laws 2005, LB 335, § 70.

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.

JAILS AND CORRECTIONAL FACILITIES

CHAPTER 47

JAILS AND CORRECTIONAL FACILITIES

Article.

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ARTICLE 1

COUNTY JAILS

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Section

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 47-124. Community work force program; administration; rules and regulations.

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.

Rules governing prisoner conduct, rights, and privileges must be posted in available places in each jail and made available to incoming pretrial detainees. *Moore v. Janing*, 427 F.Supp. 567 (D. Neb. 1976).

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.

47-102 Rules; copies; distribution; filing.

The Jail Standards Board shall, as soon as may be, cause a copy of the rules to be delivered to the county boards. It shall be the duty of each county board forthwith to cause the same to be printed, to furnish the sheriff of its county or such other person as may be charged with the administrative direction of the jail with a copy of the rules for every room or cell of the jail, and to forward a copy of the rules by mail to the Auditor of Public Accounts, who shall carefully file away and preserve the same.

Source: R.S.1866, c. 29, § 2, p. 243; R.S.1913, § 3530; C.S.1922, § 2997; C.S.1929, § 47-102; R.S.1943, § 47-102; Laws 1984, LB 394, § 10; Laws 1996, LB 233, § 3.

47-103 Rules; copies; posting in jails.

The sheriff or such other person as may be charged with the administrative direction of the jail shall, immediately on the receipt of the rules, cause a copy thereof to be posted up and continued in some conspicuous place in every room or cell of the jail.

Source: R.S.1866, c. 29, § 3, p. 243; R.S.1913, § 3531; C.S.1922, § 2998; C.S.1929, § 47-103; R.S.1943, § 47-103; Laws 1984, LB 394, § 11.

47-104 Rules; revision; copies; distribution; filing.

The Jail Standards Board may, as it may deem necessary, amend the rules, and such amended rules shall be printed and disposed of by the county board and the sheriff or such other person as may be charged with the administrative

direction of the jail in the same manner as is directed by sections 47-102 and 47-103.

Source: R.S.1866, c. 29, § 4, p. 243; R.S.1913, § 3532; C.S.1922, § 2999; C.S.1929, § 47-104; R.S.1943, § 47-104; Laws 1984, LB 394, § 12; Laws 1996, LB 233, § 4.

47-105 Rules; enforcement; sheriff; powers and duties.

The sheriff, or, in case of his or her death, removal, or disability, the person by law appointed to such office, shall have charge of the county jail of his or her proper county, and of all persons by law confined therein, and such sheriff or other person as may be charged with the administration of the jail shall conform to the rules and directions of the Jail Standards Board which may be made and communicated to him or her by the county board.

Source: R.S.1866, c. 29, § 5, p. 244; R.S.1913, § 3533; C.S.1922, § 3000; C.S.1929, § 47-105; R.S.1943, § 47-105; Laws 1996, LB 233, § 5.

Sheriff has charge of county jail and is the custodian thereof. Flint v. Mitchell, 148 Neb. 244, 26 N.W.2d 816 (1947). is not a prerequisite to such imprisonment. State ex rel. Marasco v. Mundell, 127 Neb. 673, 256 N.W. 519 (1934).

Where judgment in criminal action requires imprisonment of defendant until fine is paid, issuance of execution to collect fine

47-105.01 Rules; conformance by sheriff or jail administrator.

The sheriff or such other person as may be charged with the administration of the jail shall conform to the rules and directions as prescribed by the Jail Standards Board pursuant to sections 47-101 and 47-104 which may be made and communicated to him or her by the county board.

Source: Laws 1984, LB 394, § 13; Laws 1996, LB 233, § 6.

47-106 Jail register; required entries.

The sheriff or such other person as may be charged with the administrative direction of the jail shall procure, at the expense of the proper county, a suitable book to be called the jail register, in which he or she shall enter (1) the name of each prisoner, with the date and cause of his or her commitment, (2) the date or manner of his or her discharge, (3) what sickness, if any, has prevailed in the jail during the year and if known, what were the causes of such disease, (4) whether any or what labor has been performed by the prisoners, and the value thereof, (5) the habits of the prisoners as to personal cleanliness, diet, and order, (6) the operations of the rules and directions prescribed by the Jail Standards Board, (7) the means furnished prisoners of literary, moral, and religious instruction, and of labor, and (8) all other matters required by the rules, or in the discretion of such person deemed proper. The sheriff or such other person as may be charged with the administrative direction of the jail shall carefully keep and preserve the jail register in his or her office and at the expiration of his or her office shall deliver the same to the successor in office.

Source: R.S.1866, c. 29, § 6, p. 244; R.S.1913, § 3534; C.S.1922, § 3001; C.S.1929, § 47-106; R.S.1943, § 47-106; Laws 1975, LB 417, § 34; Laws 1984, LB 394, § 14; Laws 1996, LB 233, § 7.

47-107 Jail reports; filing.

The sheriff or such other person as may be charged with the administrative direction of the jail shall, on or before November 1 in each year, make out in

writing from the jail register a jail report, one copy of which report he or she shall forthwith file in the office of the clerk of the district court of the proper district and one copy with the county clerk of the county, for the use of the county board thereof.

Source: R.S.1866, c. 29, § 7, p. 244; R.S.1913, § 3535; C.S.1922, § 3002; C.S.1929, § 47-107; R.S.1943, § 47-107; Laws 1961, c. 231, § 1, p. 686; Laws 1984, LB 394, § 15.

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.

47-110 Jails; equipment; appointment of physician; duties of county board; physician's report.

It shall be the duty of the county board at the expense of the respective counties to provide suitable means for warming the jail and its cells or apartments and provide frames and mattresses for beds and such other permanent fixtures and repairs as may be prescribed by the Jail Standards Board. The county board shall have power to appoint a physician to the jail when it deems it necessary and shall pay to such physician an annual or other salary as it may think reasonable and proper, which salary shall be drawn out of the county treasury. Such medical officer, or any physician or surgeon who is employed in the jail, shall make a report in writing whenever required by the county board, Jail Standards Board, or grand jury.

Source: R.S.1866, c. 29, § 10, p. 245; Laws 1903, c. 55, § 1, p. 346; R.S.1913, § 3538; Laws 1919, c. 113, § 1, p. 276; C.S.1922, § 3005; C.S.1929, § 47-110; R.S.1943, § 47-110; Laws 1975, LB 417, § 35; Laws 1996, LB 233, § 10.

Authority of county board to purchase electric refrigerator to be installed in county jail was upheld. *Beadle v. Harmon*, 130 Neb. 389, 265 N.W. 18 (1936).

47-111 Female prisoners; matron, deputy, or correctional officer; appointment; salary; oath; reports.

In every county jail where there is a female prisoner, twenty-four-hour supervision shall be provided by a matron appointed by the county board, whose duty it shall be to have entire charge of the female prisoners, and the board may also in its discretion appoint such matron when there is a sick prisoner or one that is a minor under the age of sixteen. Such matrons shall be under the direction of the sheriff or such other person as may be charged with the administrative direction of the jail, shall take the necessary oath before entering upon the duties of the office, and shall be paid by the board from the county treasury only for the time actually engaged; *Provided*, that in counties having a population in excess of two hundred thousand inhabitants, a deputy or correctional officer shall be hired by the person whose duty it shall be to have charge of the female prisoners and perform those functions required of a deputy related to such duty, at a salary of not less than five hundred dollars per month, which salary shall be drawn out of the county treasury. Such matron, deputy, or correctional officer shall, when required, report to the board or district judges.

Source: Laws 1903, c. 55, § 1, p. 346; R.S.1913, § 3538; Laws 1919, c. 113, § 1, p. 277; C.S.1922, § 3005; C.S.1929, § 47-110; R.S.1943, § 47-111; Laws 1947, c. 62, § 15, p. 207; Laws 1947, c. 76, § 3, p. 240; Laws 1951, c. 53, § 4, p. 182; Laws 1975, LB 417, § 36; Laws 1984, LB 394, § 16.

47-112 Jail conductor; appointment; salary.

In counties having a population in excess of two hundred thousand inhabitants where the jail is situated above the ground floor and requires an operator for an elevator to transfer the prisoners to and from said jail, there shall be a jail conductor to operate said elevator, to be appointed by the sheriff or such other person as may be charged with the administrative direction of the jail, who shall be paid such salary as the county board may think reasonable and proper by warrant drawn on the general fund.

Source: R.S.1866, c. 29, § 10, p. 245; Laws 1903, c. 55, § 1, p. 346; R.S.1913, § 3538; Laws 1919, c. 113, § 1, p. 277; C.S.1922, § 3005; C.S.1929, § 47-110; R.S.1943, § 47-112; Laws 1947, c. 62, § 16, p. 208; Laws 1984, LB 394, § 17.

47-112.01 Transferred to section 47-119.

47-113 Repealed. Laws 1980, LB 628, § 9.

47-113.01 Repealed. Laws 1980, LB 628, § 9.

47-114 Jails; administrative visitation.

The sheriff or such other person as may be charged with the administrative direction of the jail shall visit the jail in person and examine into the condition

of each prisoner at least once in each month, and once during each term of the district court.

Source: R.S.1866, c. 29, § 12, p. 246; R.S.1913, § 3540; C.S.1922, § 3007; C.S.1929, § 47-112; R.S.1943, § 47-114; Laws 1984, LB 394, § 18.

47-115 Jailer; appointment; oath; liability of sheriff.

The jailer or keeper of the jail, unless the sheriff elects to act as jailer in person or unless a county board of corrections exists and has assumed responsibility over the jail pursuant to sections 23-2801 to 23-2806, shall be a deputy appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his or her office; *Provided*, the sheriff shall in all cases be liable for the negligence and misconduct of the jailer, as of other deputies.

Source: R.S.1866, c. 29, § 13, p. 246; R.S.1913, § 3541; C.S.1922, § 3008; C.S.1929, § 47-113; R.S.1943, § 47-115; Laws 1984, LB 394, § 19.

Deputy appointed by sheriff to act as jailer is public officer, and contract by him and county board, by which he agrees to perform duties for different compensation than fixed by law, is void as against public policy. *Scott v. Scotts Bluff County*, 106 Neb. 355, 183 N.W. 573 (1921).

It is optional with the sheriff as to whether he will discharge the duties of jailer himself, or place the burden upon a deputy. *Afflerbach v. York County*, 95 Neb. 611, 146 N.W. 1050 (1914).

Sheriff who performs no duties as jailer, but appoints another who performs same and receives compensation from county, is not entitled to fees as jailer. *McFadden v. Cedar County*, 95 Neb. 318, 145 N.W. 639 (1914).

Sheriff may act as jailer, or appoint deputy. If sheriff acts, he receives fees for services as jailer, and, if deputy acts, deputy receives the fees. *Dunkel v. Hall County*, 89 Neb. 585, 131 N.W. 973 (1911).

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.

47-117 Jail, defined.

For the purposes of Chapter 47, article 1, jail shall be defined to include a jail, house of correction, community residential center, work release center, halfway house, or other place of confinement of a person committed by any lawful authority to any suitable and appropriate residence, facility, center, or institution designated as a jail facility by the county.

Source: Laws 1979, LB 315, § 3.

47-118 Repealed. Laws 1980, LB 628, § 9.

47-119 Repealed. Laws 2009, LB 218, § 14.

47-119.01 Repealed. Laws 2009, LB 218, § 14.**47-120 Care of prisoners; county board or county board of corrections; sheriff; duties; payment.**

The county board or county board of corrections serving pursuant to Chapter 23, article 28, shall provide proper quarters and adequate equipment for the preparation and serving of all meals furnished to all prisoners confined in the county jail. The county sheriff or the county board of corrections shall have full charge and control of such services and the county board shall provide for all washing, fuel, lights, and clothing for prisoners, subject to the right of the county to be paid by the city or federal government for city or federal prisoners at actual cost to the county. Supplies of every nature entering into the furnishing of meals, washing, fuel, lights, and clothing to the prisoners confined in the county jail shall be purchased and provided under the direction of the county sheriff or the county board of corrections. Payment for all purchases shall only be made by the county board on the original invoices submitted by the sheriff or the county board of corrections of goods, supplies, and services, setting forth (1) that the invoice correctly describes the goods as to quality and quantity, (2) that the same have been received and are in the custody of the affiant, (3) that they have been or will be devoted exclusively to the purposes authorized in this section, and (4) that the price charged is reasonable and just. Nothing in this section shall be construed to restrict the sheriff or the county board of corrections in employing necessary personnel and from otherwise carrying out the duties required in the operation of the jail.

Source: Laws 1980, LB 628, § 5; Laws 1984, LB 394, § 20; Laws 1989, LB 4, § 6; Laws 1998, LB 695, § 3; Laws 2009, LB218, § 2.

47-121 Repealed. Laws 2009, LB 218, § 14.**47-121.01 Repealed. Laws 2009, LB 218, § 14.****47-122 Community work force program; established; activities authorized.**

Every county board or, in counties which have established such, the county board of corrections may establish a community work force program in which prisoners in the county jails may work on community service projects within that county. As used in sections 47-122 to 47-124, community service project shall mean work for a city or county, or any agency, department, or subdivision thereof, except that such projects shall not include projects which other government employees regularly perform or projects which the county or city regularly contracts with private industry to perform. The board is encouraged to include established volunteer activities which benefit the general public as acceptable projects. Work by a prisoner on a community service project shall not confer a private benefit on any person except as may be incidental to the public benefit.

Source: Laws 1983, LB 180, § 1.

47-123 Community service projects; inmate participation; good time; effect.

Inmate participation in community service projects shall be voluntary and no extra good-time credit shall be given to inmates who participate in a community service project. In no event shall an inmate's decision to participate or not

participate in a community service project have any bearing on the granting of good-time credit.

Source: Laws 1983, LB 180, § 2.

47-124 Community work force program; administration; rules and regulations.

(1) In counties which have a county board of corrections, that board shall administer the community work force program and shall adopt and promulgate rules and regulations for such administration. In all other counties, the sheriff shall administer the program and adopt and promulgate the rules and regulations therefor. In counties in which the sheriff administers the program, the sheriff shall submit for approval the proposed rules and regulations to the district court and the county court for such county.

(2) Such rules and regulations shall address, but shall not be limited to, the factors to be considered in assigning an inmate to a community service project. Included among these factors shall be (a) the physical and mental abilities of the inmate, (b) the benefit to the public of having the inmate work on the community service project, (c) the security of the jail, (d) the safety of the general public, (e) the number and type of supervisory personnel necessary, and (f) the likelihood of an attempted escape. No inmate shall be asked to perform unreasonably hazardous work that would endanger the life or health of the inmate or others.

Source: Laws 1983, LB 180, § 3.

**ARTICLE 2
CITY JAILS**

Cross References

Bond issues for erection or improvement:

Cities of the first class, see section 16-6,100.
Cities of the second class and villages, see sections 10-409 to 10-411.

Criminal detention minimum standards, see sections 83-4,124 to 83-4,134.02.

Establishment and maintenance authorized:

Cities of the first class, see section 16-239.
Cities of the metropolitan class, see section 14-102.
Cities of the primary class, see section 15-259.
Cities of the second class, see section 17-127.

Hard labor, sentence may require:

Cities of the first class, see section 16-225.
Cities of the metropolitan class, see section 14-102.
Cities of the primary class, see section 15-263.

Jail Standards Board, see section 83-4,124.

Tax levy by cities of first or second class or villages to establish fund for construction or improvement, see section 19-1302.

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.
47-202.	Rules; copies; distribution; posting.
47-203.	Rules; amend; copies; distribution; posting.
47-204.	Jail record; required entries; open for inspection; period maintained.
47-205.	Jailers; reports; contents; filing.
47-206.	Jailer; neglect of duty; penalty.
47-207.	Jail, defined.
47-208.	City or village prisoners; employment on public improvement projects.

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.

47-202 Rules; copies; distribution; posting.

The Jail Standards Board shall cause a copy of the rules to be delivered to the mayor or chief officer of the municipalities, and it shall be the duty of such mayor or other chief officer to cause a copy of the same to be furnished to the person in charge of the prison or jail, to file a copy with the clerk of the municipality, and to further cause a copy to be conspicuously posted in the prison or jail.

Source: Laws 1915, c. 208, § 2, p. 462; C.S.1922, § 3011; C.S.1929, § 47-116; R.S.1943, § 47-202; Laws 1996, LB 233, § 13.

47-203 Rules; amend; copies; distribution; posting.

The Jail Standards Board may, as it may deem proper, amend the rules, and such amended rules and their copies shall be disposed of in the same manner as provided in section 47-202.

Source: Laws 1915, c. 208, § 3, p. 463; C.S.1922, § 3012; C.S.1929, § 47-117; R.S.1943, § 47-203; Laws 1996, LB 233, § 14.

47-204 Jail record; required entries; open for inspection; period maintained.

The officer in charge of any municipal jail shall keep a written record which shall show the name of each person confined, the date of the commencement and termination of his or her confinement, the nature of the charge against him or her, and the medical service provided. Such officer shall keep such further records as may be prescribed by the rules of the Jail Standards Board. The records so kept shall be subject to the inspection of any person and to the public generally and shall be kept for such periods of time as may be prescribed by the rules of the State Records Administrator.

Source: Laws 1915, c. 208, § 4, p. 463; C.S.1922, § 3013; C.S.1929, § 47-118; R.S.1943, § 47-204; Laws 1971, LB 271, § 1; Laws 1975, LB 417, § 37; Laws 1996, LB 233, § 15.

47-205 Jailers; reports; contents; filing.

The officer in charge of any municipal jail shall on or before the first day of February of each year, for the preceding calendar year, and at such other times as he or she may be required by the Jail Standards Board, make out a written report and cause copies to be filed with the city clerk and the clerk of the district court of the county where such municipality is located. Such report shall contain a summary of the records required to be kept by the officer as provided in section 47-204 and such other data and matters as may be required by the Jail Standards Board.

Source: Laws 1915, c. 208, § 5, p. 463; C.S.1922, § 3014; C.S.1929, § 47-119; R.S.1943, § 47-205; Laws 1971, LB 271, § 2; Laws 1996, LB 233, § 16.

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.

47-207 Jail, defined.

For the purposes of Chapter 47, article 2, jail shall be defined to include a jail, house of correction, community residential center, work release center, halfway house, or other place of confinement of a person committed by any lawful authority to any suitable and appropriate residence, facility, center, or institution designated as a jail facility by the city.

Source: Laws 1979, LB 315, § 4.

47-208 City or village prisoners; employment on public improvement projects.

The governing board of every city and village may employ at labor on the public streets and other public improvements, persons confined in the jail of such city or village, as the case may be, on account of conviction for violation of statutes or ordinances. The governing board shall prescribe rules and regulations governing employment and safekeeping, and determine what compensation, if any, such prisoners shall receive for their services.

Source: Laws 1913, c. 228, § 1, p. 659; R.S.1913, § 3543; Laws 1915, c. 70, § 1, p. 184; C.S.1922, § 3016; Laws 1929, c. 137, § 1, p. 491; C.S.1929, § 47-201; R.S.1943, § 47-301; R.S.1943, (1978), § 47-301; Laws 1983, LB 180, § 6.

ARTICLE 3**JOINT COUNTY AND CITY JAILS AND LANDS**

Section

- 47-301. Transferred to section 47-208.
- 47-302. Joint county and city jail; acquisition of land; procedure; bonds; taxes; election; when required.
- 47-303. Joint operation and maintenance.
- 47-304. County jails; construction; acquisition of lands; procedure; bonds; taxes; election; when required.
- 47-305. City jails; construction; acquisition of lands; procedure; bonds.
- 47-306. Joint county and city jails; management; use by one of jail of other; contract.
- 47-307. Joint county and city jails; maintenance; cost; apportionment.
- 47-308. Joint jail or farm; name.

47-301 Transferred to section 47-208.**47-302 Joint county and city jail; acquisition of land; procedure; bonds; taxes; election; when required.**

(1) The county board of such county, and the mayor and council or legislative authorities of such incorporated city located within the county, are hereby authorized and empowered to unite in the construction and maintenance of a jail, and to acquire land by purchase, condemnation, or otherwise for farm or other purposes for the employment of such prisoners. The procedure to con-

demn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Whenever such county and city may agree upon the location and specifications of the jail and land, they may each proceed to issue bonds, levy taxes, and do all other necessary acts to erect a jail building and to purchase land and erect buildings thereon, all to be owned jointly by both county and city aforesaid. Any such city shall have power to borrow money and pledge the credit and property thereof on its negotiable bonds or otherwise, for the purpose of paying for its portion of the cost of any such land, jail, or both, except that neither the county nor the city shall make any contracts or spend any funds toward carrying out the purposes specified, until authority for action by both shall have been obtained.

(3) When required by law, the question involved in the appropriations for the jail and the purchase of the land shall be submitted to a vote of the people of the county or city.

Source: Laws 1913, c. 228, § 2, p. 660; R.S.1913, § 1344; C.S.1922, § 3017; C.S.1929, § 47-202; R.S.1943, § 47-302; Laws 1951, c. 101, § 97, p. 493; Laws 1981, LB 140, § 1.

47-303 Joint operation and maintenance.

Whenever the county board and mayor and council or other legislative body in a city have voted to unite in the carrying out of any of the objects provided for in sections 47-302 to 47-308, both city and county shall be bound to continue the contract and operate and maintain the jail and land for the employment of prisoners, unless both agree to discontinue or abandon the same.

Source: Laws 1913, c. 228, § 3, p. 660; R.S.1913, § 3545; C.S.1922, § 3018; C.S.1929, § 47-203; R.S.1943, § 47-303; Laws 1995, LB 10, § 1.

47-304 County jails; construction; acquisition of lands; procedure; bonds; taxes; election; when required.

The county board of such county is authorized and empowered to construct and maintain a jail and purchase land for farm or other purposes for the employment of prisoners as hereinbefore provided. Such county may proceed in the manner provided by law for the erection of public buildings and the purchase of public property and issue bonds, levy taxes, secure land, and do all other necessary acts to erect a jail building and to acquire land by purchase, condemnation, or otherwise, and erect buildings thereon. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. When required by law, the question involved in the appropriation for such jail and the purchase of such land shall be submitted to a vote of the people of the county.

Source: Laws 1913, c. 228, § 4, p. 660; R.S.1913, § 3546; C.S.1922, § 3019; C.S.1929, § 47-204; R.S.1943, § 47-304; Laws 1951, c. 101, § 98, p. 493.

47-305 City jails; construction; acquisition of lands; procedure; bonds.

The city council or legislative authority of such incorporated city is hereby authorized and empowered to erect and maintain a jail, and to acquire land by purchase, condemnation, or otherwise for farm or other purposes for the employment of prisoners. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. Such city shall have power to borrow money and pledge the credit and property thereof on its negotiable bonds or otherwise, for the purpose of paying for the cost of any such land, jail, or both.

Source: Laws 1913, c. 228, § 5, p. 661; R.S.1913, § 3547; C.S.1922, § 3020; C.S.1929, § 47-205; R.S.1943, § 47-305; Laws 1951, c. 101, § 99, p. 494; Laws 1981, LB 140, § 2.

47-306 Joint county and city jails; management; use by one of jail of other; contract.

Where such county and such city shall unite in the construction and maintenance of a jail, or in the purchase of land for farm or other purposes and erect public buildings thereon, the sheriff of such county or such other person as may be charged with the administrative direction of the jail and the chief police officer of such city shall jointly conduct and manage said jail for the detention of prisoners and said land for the employment of prisoners, except as otherwise provided by agreement between such county and city; *Provided*, where any such county or any such city shall build such jail or purchase such land independently of the other, such county or such city as does not own or manage a jail for the detention of prisoners, or land for the employment of prisoners, shall have the right to contract with the other for its use, with payment made as provided in any such contract.

Source: Laws 1913, c. 228, § 6, p. 661; R.S.1913, § 3548; C.S.1922, § 3021; C.S.1929, § 47-206; R.S.1943, § 47-306; Laws 1961, c. 232, § 2, p. 687; Laws 1969, c. 67, § 2, p. 383; Laws 1984, LB 394, § 22.

The 1969 amendments of sections 15-264 and 47-306 did not affect sections 16-252 and 17-566. *City of Grand Island v. County of Hall*, 196 Neb. 282, 242 N.W.2d 858 (1976).

47-307 Joint county and city jails; maintenance; cost; apportionment.

Where such county and such city unite in the construction and maintenance of a jail and the purchase of land for employment of prisoners, the cost of maintenance shall be divided equally between the city and county except for the cost of providing the food for prisoners. The cost for prisoners charged with or found guilty of offenses against the general criminal laws of the state shall be provided by the county, and the cost for prisoners charged with or found guilty of violating ordinances of the city shall be provided by the city.

Source: Laws 1913, c. 228, § 7, p. 661; R.S.1913, § 3549; C.S.1922, § 3022; C.S.1929, § 47-207; R.S.1943, § 47-307.

47-308 Joint jail or farm; name.

Where such county and city unite in the construction of a jail, the name of such jail shall be city and county jail, and when they unite in the purchase of land for the employment of prisoners, such place of detention shall be called detention farm.

Source: Laws 1913, c. 228, § 8, p. 662; R.S.1913, § 3550; C.S.1922, § 3023; C.S.1929, § 47-208; R.S.1943, § 47-308.

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.
- 47-402. Privilege of leaving jail; petition; order of sentencing court; withdrawal of privilege.
- 47-403. Privilege of leaving jail; employment; wages; account; disbursement.
- 47-404. Privilege of leaving jail; prisoner; liable for costs.
- 47-405. Privilege of leaving jail; meals; transportation.
- 47-406. Prisoner's account; disbursement.
- 47-407. Court; arrangements for employment of prisoner; concurrence with another county or city.
- 47-408. Repealed. Laws 1996, LB 1155, § 121.
- 47-409. Privilege of leaving jail; violation of jail regulations; effect.
- 47-410. Prisoner; employed or released; not agent, employee, or servant of city, county, or court.
- 47-411. Willful failure of prisoner to comply with court order; deemed an escape from custody.

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.

Denial of work release should not be subject to review except where there has been a clear abuse of the court's broad discretion. *State v. Temple*, 195 Neb. 91, 236 N.W.2d 835 (1975).

privileges hereunder. *State v. Redwine*, 192 Neb. 638, 223 N.W.2d 488 (1974).

A person convicted of a felony and sentenced to imprisonment in a city or county jail is not eligible to receive work release

47-402 Privilege of leaving jail; petition; order of sentencing court; withdrawal of privilege.

The privilege of leaving the jail as set forth in section 47-401 shall be granted only by written order of the sentencing court, after conferring with the chief of police, county sheriff, or such other person as may be charged with the administrative direction of the jail, specifically setting forth the terms and conditions of the privilege granted. The prisoner may petition the court for such privilege at the time of sentencing, or thereafter, and, in the discretion of the court, may renew his or her petition. The court may withdraw the privilege at any time by written order entered with or without prior notice.

Source: Laws 1969, c. 208, § 2, p. 813; Laws 1984, LB 394, § 23.

Denial of work release should not be subject to review except where there has been a clear abuse of the court's broad discretion. *State v. Temple*, 195 Neb. 91, 236 N.W.2d 835 (1975).

47-403 Privilege of leaving jail; employment; wages; account; disbursement.

The court may endeavor to secure employment for unemployed prisoners under this section. If a prisoner is employed for wages or salary, the court may collect the same, or require the prisoner to turn over his wages or salary in full when received, and the court shall keep a ledger showing the status of the account of each prisoner. Except when the prisoner returns to the employment he held at the time of his arrest, such employment shall not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services, and the rates of pay and other conditions of employment shall not be less than for work of similar nature in the locality in which the work is to be performed.

Source: Laws 1969, c. 208, § 3, p. 814.

47-404 Privilege of leaving jail; prisoner; liable for costs.

Every prisoner granted the privilege of leaving the jail as set forth in sections 47-401 to 47-411 shall be liable for such costs incident to his confinement as the court deems appropriate and reasonable, if such costs are specifically set forth in the order of the court granting the privilege pursuant to sections 47-401 to 47-411.

Source: Laws 1969, c. 208, § 4, p. 814.

Food and laundry, but not lodging expense, are costs incidental to confinement. *State v. Towle*, 197 Neb. 494, 249 N.W.2d 754 (1977).

47-405 Privilege of leaving jail; meals; transportation.

If necessarily absent from jail at mealtime, the prisoner shall, at his request, be furnished with an adequate meal to carry with him during his absence and the chief of police, county sheriff, or other governmental agency may provide for the transportation of prisoners released pursuant to sections 47-401 to 47-411. Such meals and transportation shall be considered as a cost incident to the confinement of the prisoner.

Source: Laws 1969, c. 208, § 5, p. 814.

47-406 Prisoner's account; disbursement.

As soon as adequate funds are available in the prisoner's account in accordance with section 47-403, and to the extent of the funds in such account, the court shall, by written order, disburse such funds for the following purposes and in the following order of priority:

- (1) The board of the prisoner;
- (2) Necessary travel expense and other incidental expenses of the prisoner;
- (3) Support of the prisoner's dependents, if any;
- (4) Payment either in full or in part, of the prisoner's obligations acknowledged by him in writing, or which have been reduced to judgment; and
- (5) The balance, if any, to the prisoner upon his discharge.

Source: Laws 1969, c. 208, § 6, p. 814.

Board includes food, but not lodging, in this section. *State v. Towle*, 197 Neb. 494, 249 N.W.2d 754 (1977).

47-407 Court; arrangements for employment of prisoner; concurrence with another county or city.

The court may arrange with the chief of police, sheriff, or such other person as may be charged with the administrative direction of the jail in a city or county other than the one in which the sentencing court is located for the employment of the prisoner in the other county, and for the prisoner while so employed to be in the custody of such sheriff or chief of police, but in all other respects to be and continue subject to the order of the sentencing court. If the prisoner was convicted in a court in another city or county, the court of record having jurisdiction may, at the request or with the concurrence of the sentencing court, make all determinations and orders under sections 47-401 to 47-411 as might otherwise be made by the sentencing court after the prisoner is received at the jail.

Source: Laws 1969, c. 208, § 7, p. 815; Laws 1984, LB 394, § 24.

Denial of work release should not be subject to review except where there has been a clear abuse of the court's broad discretion. *State v. Temple*, 195 Neb. 91, 236 N.W.2d 835 (1975).

47-408 Repealed. Laws 1996, LB 1155, § 121.

47-409 Privilege of leaving jail; violation of jail regulations; effect.

The chief of police, county sheriff, or such other person as may be charged with the administrative direction of a jail or jail facility may refuse to permit

the prisoner to exercise his privilege to leave the jail or jail facility as provided in section 47-401 for any breach of discipline or other violation of jail regulations. Any such breach of discipline or other violation of jail regulations shall be reported to the sentencing court.

Source: Laws 1969, c. 208, § 9, p. 815; Laws 1979, LB 315, § 2.

47-410 Prisoner; employed or released; not agent, employee, or servant of city, county, or court.

No prisoner employed or otherwise released as provided in sections 47-401 to 47-411, while working in such employment or at any time during his release, shall be deemed an agent, employee, or servant of the city, county or court having jurisdiction over the prisoner.

Source: Laws 1969, c. 208, § 10, p. 815.

47-411 Willful failure of prisoner to comply with court order; deemed an escape from custody.

The willful failure of a prisoner to comply with the order of the court granting him the privilege of leaving the jail as provided by sections 47-401 to 47-411 or to return within the time set forth in such order shall be deemed an escape from custody punishable as provided by applicable municipal ordinances or state statutes.

Source: Laws 1969, c. 208, § 11, p. 815.

ARTICLE 5

SENTENCE REDUCTIONS AND CREDITS

Section

47-501. County board of corrections; sheriff; duty to implement sentence reductions and credits.

47-502. Person sentenced to or confined in jail; sentence or sanction reduction.

47-503. Credit against jail term.

47-501 County board of corrections; sheriff; duty to implement sentence reductions and credits.

The county board of corrections shall be responsible for the implementation of sections 47-502 and 47-503 in the county in which it serves. In counties which do not have a county board of corrections, the county sheriff shall be responsible for the implementation of sections 47-502 and 47-503.

Source: Laws 1982, LB 231, § 1; R.S.Supp.,1982, § 23-2810; Laws 1983, LB 180, § 4; Laws 1993, LB 113, § 1.

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.

Probationers serving consecutive jail time are eligible to earn good time credit. *State v. Lobato*, 259 Neb. 579, 611 N.W.2d 101 (2000).

A probationer sentenced to an intermittent sentence is not entitled to a reduction of that sentence pursuant to this section. This section does not apply to probationers sentenced to intermittent sentences authorized pursuant to section 29-2262. *State v. Salyers*, 239 Neb. 1002, 480 N.W.2d 173 (1992).

This section, establishing good time credit in the county jail system, is applicable to time spent in the county jail awaiting sentencing. *Williams v. Hjorth*, 230 Neb. 97, 430 N.W.2d 52 (1988).

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

47-503 Credit against jail term.

(1) Credit against a jail term shall be given to any person sentenced to a city or county jail for time spent in jail as a result of the criminal charge for which the jail term is imposed or as a result of conduct upon which such charge is based. Such credit shall include, but not be limited to, time spent in jail:

(a) Prior to trial;

(b) During trial;

(c) Pending sentence;

(d) Pending resolution of an appeal; and

(e) Prior to delivery of such person to the county board of corrections or, in counties which do not have a county board of corrections, the county sheriff.

(2) Credit to any person sentenced to a city or county jail who is eligible for credit pursuant to subsection (1) of this section shall be set forth as part of the sentence at the time such sentence is imposed.

Source: Laws 1993, LB 113, § 3.

1. Invalid or erroneous sentence
2. Credit not allowed
3. Miscellaneous

1. Invalid or erroneous sentence

When a court grants a defendant more or less credit for time served than the defendant actually served, that portion of the pronouncement of sentence is erroneous and may be corrected to reflect the accurate amount of credit as verified objectively by the record. *State v. Galvan*, 305 Neb. 513, 941 N.W.2d 183 (2020); *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

Pursuant to subsection (2) of this section, the court had the authority to revise the sentence when the defendant was inadvertently given 361 days' credit for time served rather than the 61 days actually served. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

Pursuant to subsection (2) of this section, where a portion of a sentence is valid and a portion is invalid or erroneous, the court has the authority to modify or revise the sentence by removing the invalid or erroneous portion of the sentence if the remaining portion of the sentence constitutes a complete valid sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

2. Credit not allowed

This section does not authorize presentence credit against a jail sentence for time spent in the Department of Correctional Services serving a separate sentence. *State v. Harms*, 304 Neb. 441, 934 N.W.2d 850 (2019).

Under subsection (1) of this section, a defendant is not entitled to credit against a jail sentence for time spent in a residen-

tial substance abuse treatment facility. *State v. Anderson*, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

3. Miscellaneous

This section and section 83-1,106(1) use similar language, so the reasoning of cases involving one of these provisions is applicable to cases involving the other. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

This section provides that a defendant is entitled to "[c]redit against" his jail term. In context, that means that a judge cannot credit a defendant with more time served than the length of his or her sentence. *State v. Wills*, 285 Neb. 260, 826 N.W.2d 581 (2013).

Pursuant to this section, a sentencing court is required to separately determine, state, and grant credit for time served. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

The court has no discretion to grant a defendant more or less credit than is established by the record. *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009).

Under this section, a sentencing judge is required, at the time of sentencing, to separately determine, state, and grant the amount of credit on the defendant's sentence to which the defendant is entitled. *State v. Torres*, 256 Neb. 380, 590 N.W.2d 184 (1999).

Pursuant to subsection (2) of this section, the giving of credit for time served is part of the sentence. *State v. Clark*, 17 Neb. App. 361, 762 N.W.2d 64 (2009).

ARTICLE 6 COMMUNITY CORRECTIONS

Section
47-601. Repealed. Laws 2003, LB 46, § 56.

Section	
47-602.	Repealed. Laws 2003, LB 46, § 56.
47-603.	Repealed. Laws 2003, LB 46, § 56.
47-604.	Repealed. Laws 2003, LB 46, § 56.
47-605.	Repealed. Laws 2003, LB 46, § 56.
47-606.	Repealed. Laws 2003, LB 46, § 56.
47-607.	Repealed. Laws 2003, LB 46, § 56.
47-608.	Repealed. Laws 2003, LB 46, § 56.
47-609.	Repealed. Laws 2003, LB 46, § 56.
47-610.	Repealed. Laws 2003, LB 46, § 56.
47-611.	Repealed. Laws 2003, LB 46, § 56.
47-612.	Repealed. Laws 2003, LB 46, § 56.
47-613.	Repealed. Laws 2003, LB 46, § 56.
47-614.	Repealed. Laws 2003, LB 46, § 56.
47-615.	Repealed. Laws 2003, LB 46, § 56.
47-616.	Repealed. Laws 2003, LB 46, § 56.
47-617.	Repealed. Laws 2003, LB 46, § 56.
47-618.	Repealed. Laws 2003, LB 46, § 56.
47-619.	Act, how cited.
47-620.	Legislative intent.
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.
47-626.	Repealed. Laws 2005, LB 538, § 30.
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.
47-633.	Fees.
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.

47-601 Repealed. Laws 2003, LB 46, § 56.

47-602 Repealed. Laws 2003, LB 46, § 56.

47-603 Repealed. Laws 2003, LB 46, § 56.

47-604 Repealed. Laws 2003, LB 46, § 56.

47-605 Repealed. Laws 2003, LB 46, § 56.

47-606 Repealed. Laws 2003, LB 46, § 56.

47-607 Repealed. Laws 2003, LB 46, § 56.

47-608 Repealed. Laws 2003, LB 46, § 56.

47-609 Repealed. Laws 2003, LB 46, § 56.

47-610 Repealed. Laws 2003, LB 46, § 56.

47-611 Repealed. Laws 2003, LB 46, § 56.

47-612 Repealed. Laws 2003, LB 46, § 56.

47-613 Repealed. Laws 2003, LB 46, § 56.

47-614 Repealed. Laws 2003, LB 46, § 56.

47-615 Repealed. Laws 2003, LB 46, § 56.

47-616 Repealed. Laws 2003, LB 46, § 56.

47-617 Repealed. Laws 2003, LB 46, § 56.

47-618 Repealed. Laws 2003, LB 46, § 56.

47-619 Act, how cited.

Sections 47-619 to 47-634 shall be known and may be cited as the Community Corrections Act.

Source: Laws 2003, LB 46, § 31; Laws 2006, LB 1113, § 44; Laws 2010, LB864, § 1.

47-620 Legislative intent.

It is the intent of the Legislature that the Community Corrections Act:

(1) Provide for the development and establishment of community-based facilities and programs in Nebraska for adult offenders and encourage the use of such facilities and programs by sentencing courts and the Board of Parole as alternatives to incarceration or reincarceration, in order to reduce prison overcrowding and enhance offender supervision in the community; and

(2) Serve the interests of society by promoting the rehabilitation of offenders and deterring offenders from engaging in further criminal activity, by making community-based facilities and programs available to adult offenders while emphasizing offender culpability, offender accountability, and public safety and reducing reliance upon incarceration as a means of managing nonviolent offenders.

Source: Laws 2003, LB 46, § 32; Laws 2006, LB 1113, § 45.

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.

47-626 Repealed. Laws 2005, LB 538, § 30.

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.

47-633 Fees.

In addition to all other court costs assessed according to law, a uniform data analysis fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Community Corrections Uniform Data Analysis Cash Fund.

Source: Laws 2003, LB 46, § 45; Laws 2007, LB322, § 7.

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.
- 47-702. Primary responsibility for payment; reimbursement sources.
- 47-703. Payment by governmental agency; when; notice to provider.
- 47-704. Costs not reimbursable.
- 47-705. Sections; how construed; denial of medical services; damages.
- 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.

47-702 Primary responsibility for payment; reimbursement sources.

Primary responsibility for payment of the costs of medical services provided to individuals who are arrested, detained, taken into custody, or incarcerated shall be with the recipients of such services if the recipients are entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source as provided in subdivision (1) of this section. Providers of such medical services shall seek reimbursement from the following sources in the following order:

(1) From an insurer, a health maintenance organization, a preferred provider organization, or other similar source, if the recipient of medical services is entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source. This section does not extend or enlarge the liability of any such insurer, health maintenance organization, preferred provider organization, or other similar source, and no such insurer, health maintenance organization, preferred provider organization, or other similar source is responsible for paying or reimbursing any costs of medical services for which it is not otherwise responsible under the terms of the applicable policy, subscription, or agreement. Any individual who is entitled to payment or reimbursement for the costs of medical services under the terms of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or other similar source shall cooperate with the providers of such services by making whatever applications, assignment, or other

arrangements that are necessary in order to secure payment for the services provided; and

(2) From any other available source, including, when appropriate, the United States Department of Veterans Affairs, the Social Security Administration, the Department of Health and Human Services, or other similar source.

Source: Laws 1999, LB 112, § 2.

A recipient of medical services, or the individual's insurer or another available source, is primarily responsible for the payment of medical services. Chase County v. City of Imperial, 302 Neb. 395, 923 N.W.2d 428 (2019).

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.

A court cannot declare which party is the appropriate governmental agency responsible for the costs of medical services unless there has been a showing that the recipient of medical services or its insurer cannot pay the medical provider in whole or in part. Chase County v. City of Imperial, 302 Neb. 395, 923 N.W.2d 428 (2019).

Under this section, there is a low threshold regarding the adequacy of the affidavit the provider of services must submit to the agency to show that the costs of services have not been paid. Chase County v. City of Imperial, 302 Neb. 395, 923 N.W.2d 428 (2019).

Upon a showing that the recipient of medical services or its insurer cannot pay the medical provider in whole or in part, this section provides that the costs of medical services shall be paid by the appropriate governmental agency. Chase County v. City of Imperial, 302 Neb. 395, 923 N.W.2d 428 (2019).

47-704 Costs not reimbursable.

The costs of routine medical services provided in the ordinary course of the duties of regular staff of a jail, prison, or other similar holding or detention facility shall not be considered reimbursable under sections 47-701 to 47-705.

Source: Laws 1999, LB 112, § 4.

47-705 Sections; how construed; denial of medical services; damages.

(1) Sections 47-701 to 47-704 do not release any governmental agency from liability for the costs of medical services made necessary by the negligence, recklessness, or intentional misconduct of the agency or its employees or the costs of medical care resulting from an accident or occupational disease arising out of and in the course of the individual’s performance of tasks assigned by the staff of the facility or institution holding that individual. Any recipient or provider of medical services or any insurer, health maintenance organization, preferred provider organization, or other similar source that may be responsible for the costs of medical services pursuant to sections 47-701 to 47-704 shall be entitled to reimbursement from the appropriate governmental agency for the costs of medical services made necessary by the negligence, recklessness, or intentional misconduct of the governmental agency or its employees or the costs of medical care resulting from an accident or occupational disease arising out of and in the course of the individual’s performance of tasks assigned by the staff of the facility or institution holding that individual.

(2) Any person who denies medical services to any individual who is arrested, detained, taken into custody, or incarcerated, solely on the basis that the individual is without a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or other similar source of health insurance, is guilty of nonfeasance, shall be removed from his or her employment immediately, and shall be answerable in civil damages to the individual denied medical services.

Source: Laws 1999, LB 112, § 5.

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 8

PRIVATE PRISON CONTRACTING ACT

Section

- 47-801. Act, how cited.
- 47-802. Department of Correctional Services; Department of Administrative Services; powers and duties; contractor; duties.
- 47-803. Department of Correctional Services; contractor criteria; contract; requirements.
- 47-804. Site selection criteria.
- 47-805. Restriction on inmates.
- 47-806. County or political subdivision; prohibited acts.
- 47-807. Rules and regulations.

47-801 Act, how cited.

Sections 47-801 to 47-807 shall be known and may be cited as the Private Prison Contracting Act.

Source: Laws 2001, LB 85, § 1.

47-802 Department of Correctional Services; Department of Administrative Services; powers and duties; contractor; duties.

(1) The Department of Correctional Services is authorized to provide for incarceration, supervision, and residential treatment at facilities other than those operated by the Department of Correctional Services. Services offered for persons under the custody or supervision of the department are to include, but not be limited to, housing, treatment, medical and mental health services, work programs, education, and community corrections. Such services shall meet practices prescribed and established by the department for implementing such programs, including, but not limited to, practices concerning internal and perimeter security, discipline of inmates, educational and vocational training programs, employment of inmates, and proper food, clothing, housing, and medical care. Such services, if provided by private prison contractors, shall be contracted for as required by the Private Prison Contracting Act. All inmates incarcerated in a correctional institution operated under this subsection shall be treated in a reasonable and humane manner to the same extent as inmates incarcerated in a correctional institution operated by the department.

(2) The department is authorized to contract for the operation of correctional institutions of the department by private prison contractors. Such operation shall meet practices prescribed by the department, including, but not limited to, practices concerning internal and perimeter security, discipline of inmates, classification, educational and vocational training programs, and proper food, clothing, housing, transportation, and medical care. All inmates incarcerated in a correctional institution operated under this subsection shall be treated in a reasonable and humane manner to the same extent as inmates incarcerated in a correctional institution operated by the department. Contract requirements shall include, but not be limited to, the following:

- (a) Drug testing of inmates as determined by the department;
- (b) Compliance with all rules and regulations of the department;

(c) A requirement that the contractor report all crimes connected with the facility to the department, to local law enforcement agencies having jurisdiction of the facility, and, for a crime committed at a state institution, to the Nebraska State Patrol;

(d) A requirement that the facility be staffed at all times with a staffing pattern approved by the department and that failure to fill vacancies, as defined by the department, shall result in penalties as determined by the department;

(e) A requirement that all employees of the private prison contractor meet training requirements as determined by the department;

(f) Requirements relating to exercise of force and use of firearms as follows:

(i) Employees of a private prison contractor shall be allowed to use force and to exercise their powers and authority only (A) while on the grounds of an institution operated in whole or in part by their employer, (B) while transporting inmates, and (C) while pursuing escapees from an institution;

(ii) An employee of a private prison contractor shall be allowed to carry firearms if the private prison contractor and the employee meet all federal, state, and local requirements regarding the possession and carrying of firearms. Such employee shall only be allowed to use a firearm (A) to prevent an inmate's escape from a facility or from custody while being transported to or from a facility and (B) to prevent an act by an inmate which would cause death or serious bodily harm. For purposes of this subdivision, to prevent escape from a facility means to prevent an inmate from crossing the secure perimeter of a facility; and

(iii) Duly authorized persons who meet all the training and licensing requirements of the state where they are employed and who enter Nebraska for the purpose of transporting inmates of other states shall be authorized to use force while transporting and apprehending such inmates and shall be authorized to use deadly force under the circumstances as set forth in subdivision (ii) of this subdivision.

Subdivision (2)(f) of this section does not confer peace officer status on the private prison contractor or its employees or persons from other states and does not authorize the use of firearms, except in accordance with such subdivision;

(g) A provision that any offense which would be a crime if committed within a state or local correctional facility shall be a crime if committed in a facility operated by a private prison contractor; and

(h) A statement that the contract does not authorize, allow, or imply a delegation of authority or responsibility to any private prison contractor to perform any of the following:

(i) Calculating inmate release and parole eligibility dates;

(ii) Granting, denying, or revoking sentence credits;

(iii) Approving inmates for furloughs, work release, or parole; or

(iv) Approving the type of work inmates may perform or the wages or sentence credits which may be given the inmates engaging in such work.

(3) The department is authorized, only upon the condition that there is a need for more bed spaces when existing facilities are operating at maximum capacity of one hundred twenty-five percent, to seek approval for the construction of one

or more correctional institutions of the department by private prison contractors.

(4) A comprehensive file for all private prison contractors interested in and capable of operating one or more correctional institutions of the department or providing for the housing, care, and control of inmates in a correctional facility owned and operated by the contractor shall be maintained by the department. The file shall include:

- (a) A completed application form received from the private prison contractor;
- (b) A resume of the private prison contractor's staff and capability;
- (c) A completed performance evaluation form from past projects on which the contractor has provided private prison services;
- (d) A list of past contracts with the state;
- (e) A list of contracts to provide similar services to other states or to the United States; and
- (f) The mailing address of each private prison contractor.

Any person or firm wishing to be a private prison contractor may request at any time to be included in the comprehensive file and shall be provided necessary forms within twenty days of the request, and the department shall add such contractor to the list within twenty days of receipt of a properly completed application. The department may solicit evaluation of work done by private prison contractors from members of the private sector, which evaluation shall be part of the comprehensive file.

(5) If the department intends to contract with a private prison contractor, subject to the requirements of subsection (3) of this section, all persons and firms included in the comprehensive file established pursuant to subsection (4) of this section shall be notified by mail of such intent. Such notification shall contain the following information:

- (a) A description and the scope of the project;
- (b) Estimated time schedule for the project;
- (c) The final date for submitting to the Director of Correctional Services notice of interest in contracting; and
- (d) Other pertinent data as determined by the department.

A private prison contractor desiring consideration shall meet the requirements of this section and, to be considered, shall submit a letter expressing interest in the project to the department within thirty days after the postmark date of the letter of notification mailed by the department. The contractor shall file an updated application form if requested by the department.

(6) The department shall define the scope of a proposed project, determine the various project components, phases, and timetables, and prepare detailed project descriptions to guide prospective contractors. Before the department awards a contract to a private prison contractor, the plans shall be approved by the Director of Correctional Services.

(7) The department shall review the files of the private prison contractors desiring consideration for the project. The review shall consider the requirements of the project, replies to inquiries to former clients of the private prison contractor, and the following factors to be determined from the comprehensive file:

(a) Specialized experience in the type of work contemplated;
(b) Capacity of the private prison contractor to accomplish the work in the required time; and

(c) Past performance, from the performance evaluation form.

(8) A full report of the evaluation procedures and recommendations of the department shall be prepared by the department and submitted to the director for his or her independent review of the entire process.

(9)(a) The department shall select the private prison contractor whose qualifications and project proposal most substantially meet the criteria of the project description.

(b) The department shall execute the contract with the selected contractor, which contract shall include a fair and reasonable fee.

(c) The negotiated scope and fee shall be reported to the director for his or her approval of the award of the contract.

(10) The Department of Administrative Services shall assist the Department of Correctional Services in implementing the contracting procedures provided for in this section. The Department of Administrative Services may have a representative at any meeting involving negotiations of a contract between the Department of Correctional Services and a private prison contractor. Before submission of the proposed contract to the Governor, and prior to the date as of which the proposed contract is executed by the Department of Correctional Services, the Attorney General and the Director of Administrative Services shall review the proposed final version of the contract. The Attorney General and the Director of Administrative Services shall, within fifteen days after receipt of the proposed final version of the contract, either disapprove the contract or approve and execute the contract. If either the Attorney General or the Director of Administrative Services has objections to the proposed contract, the objections shall be communicated in writing to the Department of Correctional Services. The Department of Correctional Services shall take appropriate action regarding the objections and shall resubmit the proposed contract for additional review. The Attorney General and the Department of Administrative Services shall have an additional fifteen-day period to approve and execute the proposed contract. Failure of either the Attorney General or the Director of Administrative Services to act within the fifteen-day period shall constitute approval of the respective official to the proposed final version of the contract. The contract shall contain a separate signature block or line for signatures by the Attorney General and the Director of Administrative Services. The contract shall contain a statement to be executed by the Attorney General and the Director of Administrative Services that each one of them has reviewed the proposed contract for compliance with this section and all other applicable provisions of law and that the contract conforms to those requirements. Neither the private prison contractor nor the Director of Correctional Services shall execute the contract until the document has been executed by the Attorney General and the Director of Administrative Services as required by this subsection unless the approval of the Attorney General or the Director of Administrative Services is the result of failure to take action within the fifteen-day period prescribed by this subsection.

(11) The Director of Administrative Services may lease real property and improvements on such property to a private prison contractor in conjunction with a contract for private management of a state correctional institution

located or to be built on the property. The lease may be entered into for a two-year term renewable at the sole option of the State of Nebraska.

(12) A contract awarded to a private prison contractor pursuant to this section shall be entered into for a period specified in each contract, subject to availability of funds annually appropriated by the Legislature for that purpose. No contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year.

(13) No contract authorized pursuant to this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Department of Correctional Services:

(a) That the contractor possesses the necessary qualifications and experience to provide the services specified in the contract;

(b) That the contractor can provide the necessary qualified personnel to implement the terms of the contract;

(c) That the financial condition of the contractor is such that the terms of the contract can be fulfilled; and

(d) That the contractor has the ability to comply with applicable court orders and corrections practices.

(14) No contract authorized pursuant to this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the Department of Correctional Services that the contractor can obtain insurance or provide self-insurance to compensate the state for any property damage or expenses incurred due to the operation of prison facilities and can indemnify the state against possible lawsuits arising from the operation of prison facilities by the private prison contractor.

(15) A private prison contractor shall not be bound by state laws or other legislative enactments governing the appointment, duties, salaries, or benefits of wardens, superintendents, or other correctional employees, except that any personnel authorized to carry and use firearms shall comply with the certification standards required by law and be authorized to use firearms only to prevent a felony, to prevent escape from custody, or to prevent an act which would cause death or serious bodily injury to the personnel or to another person.

(16) Any offense which would be a crime if committed within a state correctional institution also shall be a crime if committed in an institution or facility operated by a private prison contractor.

(17) The Director of Correctional Services or his or her designee shall monitor and evaluate the performance of the private prison contractor. Monitoring and evaluation to be considered comprehensive shall include, but not be limited to:

(a) The request for proposal process, bid process, and construction and contract phases;

(b) Compliance with the contract, including the provision of essential services;

(c) Compliance with performance criteria, including American Correctional Association accreditation standards, and penalties for noncompliance;

(d) Unlimited and unrestricted access to all parts of the facility with or without notice and all reports and records of the facility except the contractor's financial records;

(e) Authority to enforce compliance, including authorization to impose a fine on the contractor for the contractor's failure to perform its contractual duties or authority to cancel the contract if appropriate; and

(f) Reports by the contractor on compliance or performance measures, including, but not limited to, significant incidents as determined by the Department of Correctional Services.

Source: Laws 2001, LB 85, § 2.

47-803 Department of Correctional Services; contractor criteria; contract; requirements.

(1) The Department of Correctional Services shall develop criteria for the process by which a contractor for the construction or operation, or both, of a private prison is to be awarded a contract. The criteria shall be subject to approval by the Director of Correctional Services. The criteria for selection of a site for a proposed facility to be constructed or operated, or both, by a private prison contractor shall include, but shall not be limited to, the availability of medical services, support services, and transportation services and the availability of potential employees who would be qualified to perform required functions at a state correctional facility.

(2) Any contract between the department and a private prison contractor pursuant to which the private prison contractor provides for the housing, care, and control of inmates in a nondepartmental facility operated by the private prison contractor shall contain, in addition to other provisions, the following terms and conditions:

(a) Requiring the private prison contractor to provide such services in a facility which meets accreditation standards established by the American Correctional Association;

(b) Requiring the contractor to receive and maintain accreditation for the facility from the American Correctional Association within two years after commencement of operations of the facility;

(c) Requiring the Department of Correctional Services to determine where the facility is to be located and to obtain written authorization from the appropriate municipality or the county board of the county in which the facility is to be located; and

(d) Granting the department the option at the beginning of each fiscal year, pursuant to an agreement, to purchase any such facility, with or without inventory or other personal property, at a predetermined price which shall be negotiated and included in a schedule or a formula to be contained in the original agreement.

(3) A private prison contractor proposing to enter a contract with the department for construction or operation, or both, of a correctional facility pursuant to this section shall demonstrate:

(a) The qualifications and the operations and management experience to carry out the terms of the contract; and

(b) The ability to comply with the standards of the American Correctional Association and with specific court orders.

(4) In addition to meeting the requirements specified in the request for proposals, a proposal for the construction and operation of a correctional facility shall:

(a) Provide for regular, onsite monitoring by the department;

(b) Acknowledge that payment by the state is subject to the availability of appropriations;

(c) Provide for payment of a maximum amount per fiscal year;

(d) Provide for meeting performance criteria or be subject to penalties;

(e) Demonstrate a cost benefit to the State of Nebraska when compared to the level and quality of programs provided by state correctional facilities that have similar types of inmates at an operational cost not more than the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities. The department shall be responsible for determining the costs and benefits of the proposal;

(f) Permit the state to terminate the contract for cause;

(g) Contain a per diem operational cost per inmate for the initial year of operations;

(h) Subject to appropriations, provide that cost adjustments may be made only once each fiscal year, to take effect at the beginning of the next fiscal year using as the maximum percentage increase, if any, an increase not to exceed the previous year's Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics;

(i) Have an initial contract term of not more than two years, with an option to renew;

(j) If the proposal includes construction of a facility, contain necessary bonds and performance conditions approved by the department that are adequate and appropriate for the proposed contract;

(k) Provide for assumption of liability by the private prison contractor for all claims arising from the services performed under the contract by the private prison contractor;

(l) Provide for an adequate plan of insurance for the private prison contractor and its officers, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private prison contractor;

(m) Provide for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private prison contractor and to protect the state from actions by a third party against the private prison contractor, its officers, employees, and agents as a result of the contract;

(n) Provide plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private prison contractor; and

(o) Contain comprehensive standards for conditions of confinement.

(5) At the end of each fiscal year, the department shall determine the average daily cost per inmate for the operational costs at each major category of correctional facility. There shall be a separate computation of the average daily

rate for medium security, minimum security, and community corrections facilities.

(6) If no proposals conform to the established criteria, the department shall prepare an additional request for proposals. The department shall evaluate the proposals within thirty days after receipt from the prospective private prison contractors. The department shall specifically determine whether a proposal meets the requirements of subdivision (4)(e) of this section by comparing the daily rate for housing and care of inmates pursuant to any proposed contract with a private prison contractor to the daily rate for housing and care of inmates at the comparable type of facility operated by the department. The department shall evaluate proposals taking into account any direct or indirect costs that would continue to be paid by the department, including, but not limited to, transportation, records management, discipline, general administration, management of inmate trust funds, and major medical coverage. Such costs shall be added to the proposed per diem of the private prison contractor when comparing the total per diem costs of facilities operated by the state.

(7) If the department proposes to enter into a contract for the construction or the operation, or both, of a private prison, the department shall compare both the capital costs and the operating costs for the facility to the imputed capital costs and the projected operating costs of a comparable facility constructed and operated by the department.

(8) A selection committee shall be established and shall deliver to the Director of Correctional Services a list containing the top three qualified prospective private prison contractors identified pursuant to this section together with the information reviewed and analyzed by the department during analysis of the proposals as required by this section. The director shall evaluate the information provided and shall make a final decision selecting the contractor within thirty days after receipt of the list and the information.

(9) Any contract subject to this section entered into by the Department of Correctional Services shall be subject to the approval of the Governor.

Source: Laws 2001, LB 85, § 3.

47-804 Site selection criteria.

(1) The Department of Correctional Services shall develop criteria for selection of a site upon which to construct the correctional facilities. The criteria shall include, but shall not be limited to, the availability of medical services, support services, and transportation services, the availability of potential employees who would be qualified to perform required functions at a state correctional facility, and any benefits of incentives offered by the applicant. The criteria shall be subject to approval by the Director of Correctional Services.

(2) The department shall establish a process for requesting proposals to construct a correctional facility built with the funds authorized.

(3) Proposals shall be submitted not later than sixty days after receipt of the request for proposals. The department shall identify the proposals meeting the criteria approved pursuant to subsection (1) of this section within sixty days after receipt of the proposals. The department shall identify by appropriate review and analysis the proposals submitted and shall select a maximum of three proposals which conform to the criteria set out in subsection (1) of this section and shall forward the proposals meeting criteria to the director.

(4) Any plans developed pursuant to the process for selection of a private prison contractor for construction of a facility authorized under the Private Prison Contracting Act shall become the nonexclusive property of the State of Nebraska as a condition of the award of the final contract for construction of the facility. The State of Nebraska shall not be obligated to obtain any further permission for use of the plans or to make payment to any person or other legal entity for the further use of the plans as may be needed for additional projects for site adaptation for buildings, structures, or both, for use by the department.

(5) The department shall be responsible for any changes or updates of such plans for construction of any additional correctional facility constructed using the plans described in subsection (4) of this section.

(6) If the department requires architectural, engineering, or other consulting services in addition to those services authorized by this section, the department shall be authorized to enter into a contract with any architect or engineer or for other necessary services, as may be required in order to adapt existing plans for new sites for additional correctional facilities. The costs of any such services shall be paid by the department.

Source: Laws 2001, LB 85, § 4.

47-805 Restriction on inmates.

A private prison contractor shall not accept or house federal inmates or inmates from another state.

Source: Laws 2001, LB 85, § 5.

47-806 County or political subdivision; prohibited acts.

The Private Prison Contracting Act does not authorize a county or other political subdivision to enter into a contract with a private prison contractor to construct or operate a correctional facility within or on behalf of such county or other political subdivision.

Source: Laws 2001, LB 85, § 6.

47-807 Rules and regulations.

The Department of Correctional Services shall adopt and promulgate rules and regulations to carry out the Private Prison Contracting Act.

Source: Laws 2001, LB 85, § 7.

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.

§ 47-901

JAILS AND CORRECTIONAL FACILITIES

Section

- 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.
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- 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.

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WORKERS' COMPENSATION

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PART I

COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

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When personal injury is caused to an employee by accident or occupational disease, arising out of and in the course of his or her employment, such employee shall receive compensation therefor from his or her employer if the employee was not willfully negligent at the time of receiving such injury.

Source: Laws 1913, c. 198, § 1, p. 579; R.S.1913, § 3642; C.S.1922, § 3024; C.S.1929, § 48-101; Laws 1943, c. 113, § 1, p. 397; R.S.1943, § 48-101; Laws 1971, LB 572, § 1.

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10. Miscellaneous

1. Accident or occupational disease

Under Nebraska's workers' compensation statutes, the law compensates a worker only for injuries resulting from an accident or occupational disease. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

The accident requirement of the act is satisfied if the cause of the injury was of accidental character or the effect was unexpected or unforeseen, and happened suddenly and violently; and, furthermore, it is no longer necessary that the injury be caused by a single traumatic event, but the exertion in the employment must contribute in some material and substantial degree to cause the injury. The term "in the course of" refers to the time, place, and circumstances surrounding the accident. The term "arising out of" describes the accident and its origin,

cause, and character, i.e., whether it resulted from the risks arising within the scope or sphere of the employee's job. *Union Packing Co. v. Klauschie*, 210 Neb. 331, 314 N.W.2d 25 (1982).

Employee can recover for accumulated effects of occupational disease when disability occurs. *Hauff v. Kimball*, 163 Neb. 55, 77 N.W.2d 683 (1956).

Award will be sustained when injury, resulting from an accident arising out of and in the course of employment and preexisting disease combined to produce disability. *Yakal v. Henkle & Joyce Hardware Co.*, 145 Neb. 365, 16 N.W.2d 531 (1944).

Physical exertion and exposure to smoke and fumes incidental to work of a city fireman in fighting fire does not constitute an

accidental injury compensable under workmen's compensation law, where it appears that the disability was due to a preexisting heart disease. *Brown v. City of Omaha*, 141 Neb. 587, 4 N.W.2d 564 (1942).

Where sudden jerk of road grading machinery results in injury to back of employee, it is sufficient to constitute an accident arising out of and in the course of his employment. *Jurgensen v. Rogers*, 139 Neb. 30, 296 N.W. 341 (1941).

Where employee fails to show with reasonable certainty that there is a causal relation between accident and his disability, compensation will be denied. *Hart v. American Community Stores Corp.*, 138 Neb. 149, 292 N.W. 387 (1940).

Claimant must show with reasonable certainty that alleged injury occurred and was caused by accident. *Wayne County v. Lessman*, 136 Neb. 311, 285 N.W. 579 (1939).

A claim for disability is properly allowed on evidence that employee suffered accidental injury to feet which caused arthritis. *Flesch v. Phillips Petroleum Co.*, 124 Neb. 1, 244 N.W. 925 (1932).

An injury which occurred in the course of employment unexpectedly and without the affirmative act or design of the employee is accidental. *Van Vleet v. Public Service Co. of York*, 111 Neb. 51, 195 N.W. 467 (1923).

The definition of "accident," as used in this section, includes injuries resulting from activities which create a series of repeated traumas ultimately producing disability. *Hadfield v. Nebraska Med. Ctr.*, 21 Neb. App. 20, 838 N.W.2d 310 (2013).

2. Arising out of and in the course of employment

An employee leaving the premises of his or her employer in the usual and customary way after his or her work is ended is within the course of his or her employment within the meaning of this section. *Zoucha v. Touch of Class Lounge*, 269 Neb. 89, 690 N.W.2d 610 (2005).

An off-premises injury during a "coffee" or "rest" break may be found to have arisen in the course of employment under this section if the employer, in all the circumstances, including duration, shortness of the off-premises distance, and limitations on off-premises activity during the interval, can be deemed to have retained authority over the employee. *Misek v. CNG Financial*, 265 Neb. 837, 660 N.W.2d 495 (2003).

The phrases used in this section, "arising out of employment" and "in the course of employment", are not synonymous and must both be established in order for the Nebraska Workers' Compensation Act to apply. A school teacher who was injured in the office of her husband, also a school teacher in the same school district, when a trapdoor was left open by workers installing cable wires, while helping her husband return computer equipment during a summer evening, was not acting "in the course of employment", so there is no need to address whether the injury arose out of the employment. *Skinner v. Ogallala Pub. Sch. Dist. No. 1*, 262 Neb. 387, 631 N.W.2d 510 (2001).

This section compensates injury caused an employee by an accident arising out of and in the course of his or her employment. Under the going to and from work rule, injuries sustained by an employee while going to and coming from work do not arise out of and in the course of employment within the meaning of this section unless it is determined that a distinct causal connection exists between an employer-created condition and the occurrence of the injury. Where an employee, in the performance of his or her duties, is required to travel and an accident occurs while he or she is so engaged, the accident arises out of and in the course of his or her employment and is within the scope of the Nebraska Workers' Compensation Act. Under the special errand exception to the going to and from work rule, when an employee, having identifiable time and space limits on the employment, makes an off-premises journey which would not normally be compensable under the usual going to and from work rule, the journey may be brought within the course of employment within the meaning of this section by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the

particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself. *Torres v. Atlick Leasing, Inc.*, 258 Neb. 859, 606 N.W.2d 98 (2000).

This section compensates injury caused to an employee by an accident arising out of and in the course of his or her employment; the phrases "arising out of" and "in the course of" are conjunctive and must both be established by a preponderance of the evidence. The phrase "arising out of", as used in this section, describes the accident and its origin, cause, and character, i.e., whether it resulted from the risks arising within the scope of the employee's job; the phrase "in the course of" refers to the time, place, and circumstances surrounding the accident. An injury sustained by an employee while going to and from work, at a fixed place of employment, does not arise out of and in the course of employment; however, when an employer designates a lot as the proper place to park and provides a shuttle from that lot to the place of employment; an injury incurred in the designated lot arises out of and in the course of employment. *La Croix v. Omaha Public Schools*, 254 Neb. 1014, 582 N.W.2d 283 (1998).

Injuries resulting from horseplay may be within the scope of employment; such injuries are within the scope of employment and compensable if (1) the deviation was insubstantial and (2) the deviation does not measurably detract from the work. *Varela v. Fisher Roofing Co., Inc.*, 253 Neb. 667, 572 N.W.2d 780 (1998).

For purposes of this section, an injury is accidental if either its cause was accidental in character or its effect was unexpected or unforeseen, it happened suddenly and violently, and the occurrence produced at the time objective symptoms of injury. The "course of employment" embraces all activities connected with changing clothes before and after work, as well as similar acts during work hours. *Cox v. Fagen Inc.*, 249 Neb. 677, 545 N.W.2d 80 (1996).

The phrase "arising out of" describes the accident and its origin, cause, and character, i.e., whether it resulted from the risks arising within the scope of the employee's job; the phrase "in the course of" refers to time, place, and circumstances surrounding the accident. The two phrases are conjunctive; in order to recover, a claimant must establish by a preponderance of the evidence the existence of both. *Johnson v. Holdrege Med. Clinic*, 249 Neb. 77, 541 N.W.2d 399 (1996).

In a workers' compensation case based on an employee's heart attack, causation required for compensability consists of two parts: legal cause and medical cause. *Rosemann v. County of Sarpy*, 237 Neb. 252, 466 N.W.2d 59 (1991).

The phrase "arising out of" refers to an injury which is the basis of a workers' compensation claim and the injury's origin, cause, and character, that is, whether an employee's unexpected or unforeseen injury results from risks arising within the scope or sphere of employment. *Rosemann v. County of Sarpy*, 237 Neb. 252, 466 N.W.2d 59 (1991).

Under the "going and coming rule," if an employee is injured while going to or from the employee's workplace, the injury does not arise out of or in the course of the employment. Under the commercial traveler exception to the going and coming rule, where an employee is required to travel in the performance of the employee's duties and an accident occurs while the employee is so engaged, it arises out of and in the course of the worker's employment and is compensable. *Reynolds v. School Dist. of Omaha*, 236 Neb. 508, 461 N.W.2d 758 (1990).

Worker is an employee under the Workmen's Compensation Act in accordance with the factors used to determine employee status including the element of control and the nature of the work. *Franklin v. Pawley*, 215 Neb. 624, 340 N.W.2d 156 (1983).

An employee must show by competent medical testimony a causal connection between the alleged injury, the employment, and the disability. *Caradori v. Frontier Airlines*, 213 Neb. 513, 329 N.W.2d 865 (1983).

Where a tree blown over by violent wind crushed the victim-employee's car, breaking the victim's neck, the evidence did not establish that a hazard imposed upon the employee by reason of

the employment was greater than that to which the public generally is subjected, and, therefore, the accident did not "arise out of" the employment. *McGinn v. Douglas County Social Services Adm.*, 211 Neb. 72, 317 N.W.2d 764 (1982).

The plaintiff in a workmen's compensation case must prove by a preponderance of the evidence that his disability is the result of an accident arising out of his employment, and when the disability is of a subjective nature, such as a psychogenic pain disorder, it requires competent medical testimony to show a causal connection between the alleged injury, the employment, and the disability. *Davis v. Western Electric*, 210 Neb. 771, 317 N.W.2d 68 (1982).

In determining whether injuries incurred off the employer's premises are compensable under this section, the court will look at the nature of the activity in which the employee was engaged at the time of the injury, not the nature of the organization that sponsored the activity. *Gray v. State*, 205 Neb. 853, 290 N.W.2d 651 (1980).

Injuries incurred in an accident that occurred on the way to a primarily social event sponsored by an organization some of whose activities are work-related are not compensable under this section. *Gray v. State*, 205 Neb. 853, 290 N.W.2d 651 (1980).

Where claimant's preexisting hip injury was aggravated in subsequent accident requiring hip joint replacement, court determined the injury was a section 48-121 case. *Jeffers v. Pappas Trucking, Inc.*, 198 Neb. 379, 253 N.W.2d 30 (1977).

An injury, to be the basis of a cause of action under the Workmen's Compensation Act, must be caused by an accident arising out of and in the course of the employment. *Reis v. Douglas County Hospital*, 193 Neb. 542, 227 N.W.2d 879 (1975).

The burden of proof is upon the claimant to establish by a preponderance of the evidence that his disability was caused by an accident out of and in the course of his employment. *Satterfield v. Negel*, 186 Neb. 332, 183 N.W.2d 237 (1971).

Where employee has returned to point of deviation and engages in the duties of his employment, he is within the coverage of the Workmen's Compensation Act. *Murphy v. Hi-Way G.M.C. Sales & Service Corp.*, 178 Neb. 397, 133 N.W.2d 595 (1965).

In order to recover, a workman has the burden of establishing that injury arose out of and in the course of his employment. *Gibb v. Highway G.M.C. Sales & Service Corp.*, 178 Neb. 127, 132 N.W.2d 297 (1964).

To be compensable, injury must arise out of and in course of employment. *Hahl v. Heyne*, 156 Neb. 599, 57 N.W.2d 137 (1953).

To be compensable under this act, accidental injuries must arise out of and in the course of employment. *Nelms v. Mahoney*, 147 Neb. 626, 24 N.W.2d 558 (1946).

Burden rests upon claimant to establish by a preponderance of the evidence that he sustained a personal injury by accident arising out of and in the course of his employment. *Schwabauer v. State*, 147 Neb. 620, 24 N.W.2d 431 (1946).

When employee selects a method of transportation of his own and injury results, though on the premises of the employer, liability does not exist where employee was not engaged in any mission for employer, and where employer exercised no control over employee or conveyance selected. *Schank v. Martin-Nebraska Co.*, 147 Neb. 385, 23 N.W.2d 557 (1946).

Where a man is employed with his own team and wagon and is injured while on his way to his barn to put away his team, the injury does not arise out of and in the course of his employment. *Wilbur v. Adams Lumber Co.*, 140 Neb. 48, 299 N.W. 268 (1941).

Where employee, to accomplish private purpose, wholly unconnected with employer's business, creates necessity for automobile trip which would not otherwise have been taken, injuries occurring on such trip are not compensable under workmen's compensation law. *Weideman v. Milburn & Scott Co.*, 138 Neb. 205, 292 N.W. 594 (1940).

An injury is not compensable where employee, on his own initiative, leaves his line of duty under his employment for purposes of his own, and, while doing so, sustains injury. *Burlage v. Lefebure Corp.*, 137 Neb. 671, 291 N.W. 100 (1940).

Where employee was drinking beer in a tavern in which he was fixing the refrigerator and was killed by a drunken companion, the death did not arise out of and in the course of his employment. *Hopper v. Koenigstein*, 135 Neb. 837, 284 N.W. 346 (1939).

One injured while leaving premises where employed, after work, is entitled to compensation. *McDonald v. Richardson County*, 135 Neb. 150, 280 N.W. 456 (1938).

Injury must arise out of and in course of employment. *McCall v. Hamilton County Farmers Telephone Assn.*, 135 Neb. 70, 280 N.W. 254 (1938); *Sheets v. Glenwood Telephone Co.*, 135 Neb. 56, 280 N.W. 238 (1938).

Compensation act does not authorize an award in case of death from a peril common to all. *Klotz v. Swift & Co.*, 133 Neb. 400, 275 N.W. 667 (1937).

Compensation can be allowed only for personal injuries or death of an employee by accident arising out of and in course of his employment. *Lang v. Gage County Electric Co.*, 133 Neb. 388, 275 N.W. 462 (1937).

Where evidence showed that plaintiff had sprained back while moving park benches in employ of city resulting in serious injuries, he was entitled to compensation. *Meierjurgan v. City of Lincoln*, 132 Neb. 896, 273 N.W. 804 (1937).

When an employee is assaulted and injured by his foreman while eating dinner furnished as a part of his wages, compensation may be allowed. *Miller v. Reisch Co.*, 132 Neb. 338, 271 N.W. 853 (1937).

Exposure to cold resulting in injury is not compensable if it is the same as that to which the general public is exposed. *Laudenklos v. Department of Roads & Irrigation*, 132 Neb. 234, 271 N.W. 790 (1937).

Employment of carpenter by farmer to construct a machine shed on his farm is not in the course of the employer's occupation within the meaning of the Workmen's Compensation Act. *Guse v. Wessels*, 132 Neb. 41, 270 N.W. 665 (1937).

Injury to officer in municipal fire department received while fighting fire on duty, is compensable under Workmen's Compensation Act. *Dunlap v. City of Omaha*, 131 Neb. 632, 269 N.W. 422 (1936).

The shooting of a traveling salesman by a highwayman, while driving from one town to another in furtherance of his employer's business, is compensable under Workmen's Compensation Act. *Goodwin v. Omaha Printing Co.*, 131 Neb. 212, 267 N.W. 419 (1936).

If injury results from doing some act, even for employer's benefit, at a place and in a manner not contemplated by the parties, it does not arise out of employment. *Albers v. Kipp*, 130 Neb. 46, 263 N.W. 593 (1935).

Employee cannot recover compensation if, at time he was injured, he had departed from master's service, and was performing service for himself. *Seversike v. Omaha Flour Mills Co.*, 129 Neb. 754, 263 N.W. 151 (1935).

Heat prostration may be compensable accident if the workman is subjected to a greater hazard from heat than that to which the public in that locality is subjected. *McNeil v. Omaha Flour Mills Co.*, 129 Neb. 329, 261 N.W. 694 (1935).

Injury to employee caused by slipping on ice on public sidewalk while going to lunch on her own time did not arise out of and in course of employment. *De Porte v. State Furniture Co.*, 129 Neb. 282, 261 N.W. 419 (1935).

When messenger boy was injured while riding bicycle, after his employer had directed him to take a street car, injury was compensable. *Volcheck v. Western Union Telegraph Co.*, 128 Neb. 502, 259 N.W. 371 (1935).

In case of exposure to elements causing death from heart failure, claim is not compensable. *Brady v. Beatrice Creamery Co.*, 127 Neb. 786, 257 N.W. 66 (1934).

Where employee was fatally injured while starting on trip in performance of his duties, dependents were entitled to compensation. *Kirkpatrick v. Chocolate Sales Corporation*, 127 Neb. 604, 256 N.W. 89 (1934).

Injury is compensable when received in performance of duty incidental to employment. *Struve v. City of Fremont*, 125 Neb. 463, 250 N.W. 663 (1933).

In order for an injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Hall v. Austin Western Road Machinery Co.*, 125 Neb. 390, 250 N.W. 258 (1933).

Where employee, engaged in his employment on public street, is struck by a missile intentionally thrown at him without provocation, injury was compensable as arising out of employment. *Good v. City of Omaha*, 125 Neb. 307, 250 N.W. 61 (1933).

Compensable injury must be reasonably incident to employment, and, unless there is causal connection between working conditions and resulting injury, injury does not arise out of employment. *Bergantzel v. Union Transfer Co.*, 124 Neb. 200, 245 N.W. 593 (1932).

Where employee was injured while returning truck to garage after making delivery for employer, injury occurred in the course of his employment. *Conzuello v. Teague*, 123 Neb. 574, 243 N.W. 779 (1932).

Where plaintiff school teacher and superintendent was injured while returning to place of employment from trip to city, on which trip he purchased some school supplies for employer, evidence was insufficient to prove injury was received in course of his employment. *Babcock v. School District No. 107*, 123 Neb. 491, 243 N.W. 831 (1932).

An injury arises out of course of employment when there is a reasonable causal connection between the conditions under which the work is required to be performed and the injury received while the employee is thus engaged. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

An injury is received in the course of employment when, at the time the injury is received, the workman is engaged at the work he is employed to perform or in some duty incidental to that work. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

Injuries to employee by reason of being required to work with incompetent, insane, or dangerous fellow servant arise out of employment. *Dodson v. Woolworth Co.*, 118 Neb. 276, 224 N.W. 289 (1929).

An injury from a peril to which the public generally is exposed does not arise out of employment. *Gale v. Krug Park Amusement Co.*, 114 Neb. 432, 208 N.W. 739 (1926).

Where a garage employee was sent on an errand and was injured while attempting to mount upon the running board of a truck going in the direction the employee was required to perform his errand, the injury arose out of and in the course of his employment. *McCrary v. Wolff*, 109 Neb. 796, 192 N.W. 237 (1923).

An injury resulting from assault by fellow employee, not arising from any duty connected with employment but following personal altercation concerning matters not arising out of the performance of any service in the employment is not one arising out of employment. *Urak v. Morris & Co.*, 107 Neb. 411, 186 N.W. 345 (1922).

Where the nature of the employment is such as to expose a worker to a wrongful act of another worker, which may reasonably be said to have been induced by the peculiar conditions of the employment, such an act may reasonably arise out of the employment. *Socha v. Cudahy Packing Co.*, 105 Neb. 691, 181 N.W. 706 (1921).

Lighting a firework was not within the scope of the claimant's job, and thus, the accident leading to his injury did not arise out of his employment; horseplay analysis was unnecessary. *Webber v. Webber*, 28 Neb. App. 287, 942 N.W.2d 438 (2020).

The two phrases "arising out of" and "in the course of" in this section are conjunctive; in order to recover, a claimant must establish by a preponderance of the evidence that both conditions exist. *Webber v. Webber*, 28 Neb. App. 287, 942 N.W.2d 438 (2020); *Coughlin v. County of Colfax*, 27 Neb. App. 41, 926 N.W.2d 675 (2019).

The "in the course of" requirement of this section has been defined as testing the work connection as to time, place, and activity; that is, it demands that the injury be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment. *Coughlin v. County of Colfax*, 27 Neb. App. 41, 926 N.W.2d 675 (2019).

The phrase "arising out of," as used in this section, describes the accident and its origin, cause, and character, i.e., whether it resulted from the risks arising within the scope of the employee's job; the phrase "in the course of," as used in this section, refers to the time, place, and circumstances surrounding the accident. *Coughlin v. County of Colfax*, 27 Neb. App. 41, 926 N.W.2d 675 (2019).

In cases governed by the Nebraska Workers' Compensation Act, the "in the course of" requirement has been defined as testing the work connection as to the time, place, and activity; the injury must be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment. *Brittain v. H & H Chevrolet*, 21 Neb. App. 986, 845 N.W.2d 619 (2014).

Injuries sustained by an employee while going to and from work do not arise out of and in the course of employment unless it is determined that a distinct causal connection exists between an employer-created condition and the occurrence of the injury. *Coffey v. Waldinger Corp.*, 11 Neb. App. 293, 649 N.W.2d 197 (2002).

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

Injuries entitling employee to workers' compensation benefits arose out of his employment when he blacked out while driving a truck in the course of his employment. *Nunn v. Texaco Trading & Transp.*, 3 Neb. App. 101, 523 N.W.2d 705 (1994).

3. Willful negligence

An employee is not willfully negligent under this section for violating an employer's safety rule when the trier of fact could reasonably infer that the safety rule was not always strictly enforced. *Guico v. Excel Corp.*, 260 Neb. 712, 619 N.W.2d 470 (2000).

An employee who was willfully negligent at the time of his injury or death will not ordinarily be entitled to recover benefits under the workers' compensation law. *Breckenridge v. Midlands Roofing Co.*, 222 Neb. 452, 384 N.W.2d 298 (1986).

The fact that an employee knew he was committing suicide will not, in all cases, constitute willful negligence. *Friedeman v. State*, 215 Neb. 413, 339 N.W.2d 67 (1983).

An employee who commits suicide is willfully negligent within the meaning of this act. *Hannon v. J. L. Brandeis & Sons, Inc.*, 186 Neb. 122, 181 N.W.2d 253 (1970).

Welding empty molasses tank without leaving air vent open or cleaning tank, where employee did not know such conduct was dangerous, did not constitute willful negligence so as to bar compensation. *Richards v. Abts*, 136 Neb. 741, 287 N.W. 199 (1939).

Lighting a match in a gas-filled room, in response to habit, after being warned against doing so is not necessarily willful negligence. *Moise v. Fruit Dispatch Co.*, 135 Neb. 684, 283 N.W. 495 (1939).

Whether the acts of an employee constitute willful negligence is dependent upon his willingness to disregard it and maintain a course of conduct indicating a reckless indifference for his own safety. *Richards v. Abts*, 135 Neb. 347, 281 N.W. 611 (1938).

Employer, who attempts to avoid liability on ground that employee was willfully negligent, must prove a deliberate act knowingly done, or at least such conduct as evidences reckless indifference to his safety. *Hoff v. Edgar*, 133 Neb. 403, 275 N.W. 602 (1937).

An employee's violation of an employer's safety rule must be intentional in order for that employee to be held willfully negligent under this section. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

4. Aggravating preexisting injury or disease

An exertion-or stress-caused heart injury to which the claimant's preexisting heart disease or condition contributes is compensable only if the claimant shows that the exertion or stress encountered during employment is greater than that experienced during the ordinary nonemployment life of the employee or any other person. While legal cause is established by satisfying the "stress greater than nonemployment life" test, a claimant must still demonstrate medical causation. If it is claimed that an injury was the result of stress or exertion in the employment, medical causation is established by a showing by the preponderance of the evidence that the employment contributed in some material and substantial degree to cause the injury. *Leitz v. Roberts Dairy*, 237 Neb. 235, 465 N.W.2d 601 (1991).

Injury lighting up a preexisting arthritic condition of spine is compensable. *City of Omaha v. Casaubon*, 138 Neb. 608, 294 N.W. 389 (1940).

Where injury, arising out of and in the course of employment, combines with preexisting disease to produce disability, recovery can be had by employee. *Chatt v. Massman Construction Co.*, 138 Neb. 288, 293 N.W. 105 (1940).

Injury from fall accelerating a preexisting disease is compensable. *Maul v. Iowa-Nebraska Light & Power Co.*, 137 Neb. 128, 288 N.W. 532 (1939).

Injury from strain or overexertion due to a physical condition predisposing the employee to injury is an injury under the terms of the Workmen's Compensation Act, even though, had the person been sound, the strain would not have been sufficient to occasion serious injury. *Dymak v. Haskins Bros. & Co.*, 132 Neb. 308, 271 N.W. 860 (1937).

Mere exertion that would not of itself produce compensable disability, does not, when combined with preexisting disease, produce compensable disability. *Gilkeson v. Northern Gas Engineering Co.*, 127 Neb. 124, 254 N.W. 714 (1934).

Where contract of employment was made in state between resident employee and employer having headquarters in state, compensation action is maintainable therein although injury was sustained in performing work outside state. *Stone v. Thomson Co.*, 124 Neb. 181, 245 N.W. 600 (1932).

Where employee injured back and shoulder in course of employment thereby causing dormant disease to flare up, and resultant disability is due to the injury, he was entitled to compensation. *Miller v. Central Coal & Coke Co.*, 123 Neb. 793, 244 N.W. 401 (1932).

5. Burden of proof

To recover under the Nebraska Workers' Compensation Act, a claimant must prove by a preponderance of the evidence that an accident or occupational disease arising out of and occurring in the course of employment proximately caused an injury which resulted in disability compensable under the act. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

This court has expressly disapproved of language in previous opinions which imposed an enhanced degree of proof by an employee with a preexisting disability or condition who is prosecuting a claim under the Nebraska Workers' Compensation Act. For an award based on disability, a claimant need only establish by a preponderance of the evidence that the employment proximately caused an injury which resulted in compensa-

ble disability. *Gray v. Fuel Economy Contracting Co.*, 236 Neb. 937, 464 N.W.2d 366 (1991).

The plaintiff has the burden to establish that an injury for which workers' compensation is sought arose out of and in the course of his employment. *McGee v. Panhandle Technical Sys.*, 223 Neb. 56, 387 N.W.2d 709 (1986).

An employee has the burden of showing that her injury resulted from her accident at work and not from the natural progression of a preexisting condition. *Taylor v. Benton*, 205 Neb. 203, 286 N.W.2d 755 (1980).

The burden of proof is upon the plaintiff to sustain his claim by a preponderance of the evidence. *Parrish v. Karl Kehm & Sons Contractors*, 186 Neb. 252, 182 N.W.2d 422 (1970).

The burden is on plaintiff to prove a right to recover. *Thelen v. J. C. Penney Co.*, 186 Neb. 53, 180 N.W.2d 693 (1970).

Claimant has burden of establishing that injury complained of was caused by accident arising out of and in course of his employment. *Huston v. Gage County Electric Co.*, 134 Neb. 805, 279 N.W. 797 (1938).

Where employee dies suddenly and mysteriously while engaged in his work, burden is on the claimant to prove facts necessary to bring case within compensation law, and such proof must be something more than mere guess. *Shamp v. Landy Clark Co.*, 134 Neb. 73, 277 N.W. 802 (1938).

Burden of proof rests upon claimant to show with reasonable certainty that his ailment was caused by the injury, and this proof must be made by substantial evidence leading either to the direct conclusion or a legitimate inference that such is the fact. *Skochdopole v. State*, 133 Neb. 440, 275 N.W. 665 (1937).

Claimant has burden of showing that he suffered injury resulting from accident arising out of and in course of his employment. *Price v. Burlington Refrigerator Express Co.*, 131 Neb. 657, 269 N.W. 425 (1936).

Burden rests upon plaintiff to prove with reasonable certainty that employee met with injury or death in accident arising out of and in the course of his employment. *Porter v. Brinn-Jensen Co.*, 131 Neb. 611, 269 N.W. 96 (1936).

Where evidence fails to show any relationship between injury and the disease from which the employee died, burden of proof was not sustained. *Beatrice Creamery Co. v. Kizer*, 127 Neb. 34, 254 N.W. 690 (1934).

Burden of proof is on plaintiff and must be established by substantial evidence and not probabilities. *Saxton v. Sinclair Refining Co.*, 125 Neb. 468, 250 N.W. 655 (1933).

Burden of proof is on employee. *Parsons Oil Co. v. Schlitt*, 125 Neb. 223, 249 N.W. 613 (1933).

When employee dies suddenly and mysteriously while engaged at work, burden of proof that death was accident arising out of employment rests on claimant hereunder. *Mullen v. City of Hastings*, 125 Neb. 172, 249 N.W. 560 (1933).

Burden of proof is on employee to prove personal injury caused by accident arose out of and in course of his employment. *Townsend v. Loeffelbein*, 123 Neb. 791, 244 N.W. 418 (1932); *Bartlett v. Eaton*, 123 Neb. 599, 243 N.W. 772 (1932).

6. Sufficiency of evidence to sustain award

A workers' compensation award cannot be based on mere possibility or speculation, and if an inference favorable to the plaintiff can only be reached on the basis thereof, he or she cannot recover. *Gray v. Fuel Economy Contracting Co.*, 236 Neb. 937, 464 N.W.2d 366 (1991).

The rule of liberal construction applies to the Workmen's Compensation Act, but it is not applicable to the evidence offered in support of a claim made for benefits under the act. *Parrish v. Karl Kehm & Sons Contractors*, 186 Neb. 252, 182 N.W.2d 422 (1970).

Evidence of plaintiff was sufficient to prove injury in the course of his employment. *Harrington v. Missouri Valley Constr. Co.*, 182 Neb. 434, 155 N.W.2d 355 (1967).

Award of compensation for permanent partial disability cannot be based on possibility or speculation. *Stevens v. Josten-Wilbert Vault Co.*, 182 Neb. 322, 154 N.W.2d 764 (1967).

Claimant to compensation for permanent partial disability cannot be based on possibility or speculation. *Stevens v. Josten-Wilbert Vault Co.*, 182 Neb. 322, 154 N.W.2d 764 (1967).

Claimant to compensation must establish right by preponderance of evidence. *Dike v. Betz*, 181 Neb. 580, 149 N.W.2d 750 (1967).

Where causation of injury is not shown by a preponderance of the evidence, claimant cannot recover. *Kastanek v. Wilding*, 181 Neb. 348, 148 N.W.2d 201 (1967).

Evidence was insufficient to show that workman killed at railroad crossing was at the time acting in the course of his employment. *Oline v. Nebraska Nat. Gas Co.*, 177 Neb. 851, 131 N.W.2d 410 (1964).

Awards for compensation cannot be based upon speculative or conjectural evidence. *Dennehy v. Lincoln Steel Works*, 136 Neb. 269, 285 N.W. 590 (1939).

Awards cannot be based on possibilities or probabilities, but they must be supported by evidence showing that claimant incurred a disability arising out of and in the course of his employment. *O'Connor v. Abbott*, 134 Neb. 471, 279 N.W. 207 (1938).

Evidence was insufficient to sustain finding that plaintiff suffered an accident arising out of and in course of his employment. *Loehr v. Alamito Dairy Co.*, 133 Neb. 444, 275 N.W. 596 (1937).

Evidence was insufficient to prove the claim that a workman who received compensation for a total disability caused by an injury in 1920, suffered total disability from a fall occurring in 1934. *McGuire v. Kansas City Bridge Co.*, 132 Neb. 1, 270 N.W. 669 (1937).

An award for compensation cannot be based on possibility, probability, speculation, or conjecture, but burden is upon claimant to show that he suffered injury from an accident arising out of and in the course of his employment. *Milton v. City of Gordon*, 129 Neb. 888, 263 N.W. 208 (1935).

Where employee was injured in course of employment and was never able to work thereafter, employee sustained burden of showing disability was due to accident and not to infectious disease. *Truka v. McDonald*, 127 Neb. 780, 257 N.W. 232 (1934).

Where the actual cause of death of employee is a matter of conjecture and speculation, the evidence is insufficient to sustain an award. *Orchard & Wilhelm Co. v. Petersen*, 127 Neb. 476, 256 N.W. 37 (1934).

Accidental death, in compensation case, need not be established to a certainty, but only to a reasonable certainty. *Aeschleman v. Haschenburger Co.*, 127 Neb. 207, 254 N.W. 899 (1934).

Award of compensation cannot be based on possibilities or probabilities. *Huffman v. Great Western Sugar Co.*, 125 Neb. 302, 250 N.W. 70 (1933).

7. Appeal

Evidence established that music supervisor killed en route to judge music contest was not acting in the course of his employment at the time he was killed since he was not to be controlled or supervised by any of the defendants while judging the contest nor did his judging activities primarily benefit any of the defendants. This court will not overturn factfindings by the Workmen's Compensation Court unless they are clearly wrong. *Stoll v. School Dist. (No. 1) of Lincoln*, 207 Neb. 670, 301 N.W.2d 68 (1981).

Supreme Court may, upon trial de novo, consider fact that trial court gave credence to testimony of some witnesses rather than to contradictory testimony of others. *Sherman v. Great Western Sugar Co.*, 127 Neb. 505, 255 N.W. 772 (1934).

Workmen's compensation cases are heard de novo in Supreme Court. *Peterson v. Borden's Produce Co.*, 125 Neb. 404,

250 N.W. 240 (1933); *Mullen v. City of Hastings*, 125 Neb. 172, 249 N.W. 560 (1933).

Time for taking appeal is governed by statute and trial court has no power to extend time, directly or indirectly. *Bradley v. Kalin*, 125 Neb. 363, 250 N.W. 257 (1933).

Workmen's compensation cases are not exempted from provisions of statute relating to the settlement and allowance of bills of exceptions. *Shaw v. Diers Bros. & Co.*, 124 Neb. 119, 245 N.W. 419 (1932).

Supreme Court has power, under this section, to reverse for inadequacy in amount of verdict, or, if excessive, to reverse and grant new trial if remittitur was not filed. *Brown v. York Water Co.*, 104 Neb. 516, 177 N.W. 833 (1920).

8. Release

Release signed by employee binds his dependents after his death, in absence of fraud. *Welton v. Swift & Co.*, 125 Neb. 455, 250 N.W. 661 (1933).

9. Injuries sustained outside state

Where all of the employees' services were performed in Nebraska, and no showing made that the industry had its situs at any other place save in Nebraska, recovery could be had, although contract of employment was made in another state. *Solomon v. A. W. Farney, Inc.*, 130 Neb. 484, 265 N.W. 724 (1936).

Nebraska workmen's compensation law is not applicable where contract of employment was made in another state, and where employee was injured in said state in the performance of duties which were not incidental to an industry conducted in the state by the employer. *Rigg v. Atlantic, Pacific & Gulf Oil Co.*, 129 Neb. 412, 261 N.W. 900 (1935).

Where employer is engaged in business in Nebraska but employee, while engaged in employer's business in another state, is injured, employee may recover compensation. *Penwell v. Anderson*, 125 Neb. 449, 250 N.W. 665 (1933).

10. Miscellaneous

Absent an amendment to the Nebraska Workers' Compensation Act, an appellate court will not judicially create a "substantially certain" exception from the act's intended exclusive jurisdiction over workplace injuries, so as to allow an employer to be sued in tort if the employer knew its tortious conduct was substantially certain to result in an employee's injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

By barring an employee's estate from bringing a tort action against the employer for the employee's accidental death in the workplace, the Nebraska Workers' Compensation Act did not violate the estate's Seventh Amendment right to a jury trial. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

Delay, cost, and uncertainty are contrary to the underlying purposes of the Nebraska Workers' Compensation Act; the act was intended by the Legislature to simplify legal proceedings and to bring about a speedy settlement of disputes between the injured employee and the employer by taking the place of expensive court actions with tedious delays and technicalities. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The distinction made by the Nebraska Workers' Compensation Act between employees who are intentional tort victims and nonemployees who are intentional tort victims, barring only employees who are injured by intentional torts of their employers from bringing a tort action, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; the act was not designed to govern the rights of nonemployees, and thus employees and nonemployees are not similarly situated, the Legislature made a rational distinction between the two groups, and workers' compensation law reflected policy choice that employers bear the costs of employees' work-related injuries. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The Nebraska Workers' Compensation Act's different standards of exclusivity for employees versus employers, providing compensation under the act for employees injured by an employer's willful negligence but not providing compensation under the act for employees injured by their own willful negligence, does not violate the equal protection, due process, or special legislation provisions of the U.S. and Nebraska Constitutions; employers and employees stand in different relations to the common undertaking and are not similarly situated, it was rational for the Legislature to recognize this fact when determining employers' and employees' rights and liabilities under the act, and it was not arbitrary for the Legislature to determine coverage under the act based on whose willful negligence caused the injury. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

The primary object of the Nebraska Workers' Compensation Act is to do away with the inadequacies and defects of the common-law remedies; to destroy the common-law defenses; and, in the employments affected, to give compensation, regardless of the fault of the employer. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

The Nebraska Workers' Compensation Act is the employee's exclusive remedy against an employer for an injury arising out of and in the course of employment. *Millard v. Hyplains Dressed Beef*, 237 Neb. 907, 468 N.W.2d 124 (1991).

The Nebraska Workers' Compensation Act should be construed liberally so that its beneficent purposes may not be thwarted by technical refinements of interpretation. *Carter v. Weyerhaeuser Co.*, 234 Neb. 558, 452 N.W.2d 32 (1990).

Allegations that an employer intentionally concealed the dangers inherent in the workplace, intentionally inflicted injury resulting in occupational disease, and intentionally concealed the true nature and effect of the disease fall within the Nebraska Workers' Compensation Act, which is the exclusive remedy. *Abbott v. Gould, Inc.*, 232 Neb. 907, 443 N.W.2d 591 (1989).

An employer's intentional concealment of the dangers inherent in the work environment and the true nature and effect of an occupational disease does not constitute involuntary servitude—the use or threat of physical force or legal coercion to extract labor from an unwilling worker—and thus construing the Workers' Compensation Act to include such conduct does not violate U.S. Const. amend. XIII or Neb. Const. art. I, sec. 2. *Abbott v. Gould, Inc.*, 232 Neb. 907, 443 N.W.2d 591 (1989).

The exclusive remedy provided by the Workers' Compensation Act satisfies the due process requirements of Neb. Const. art. I, sec. 3, as well as the requirements of Neb. Const. art. I, sec. 13, that every person shall have a remedy by due course of law for any injury done to him or her. *Abbott v. Gould, Inc.*, 232 Neb. 907, 443 N.W.2d 591 (1989).

An employee's injuries are compensable as long as his employment duties put him in a position that he might not otherwise be in which exposes him to a greater risk, even though the risk is not greater than that of the general public. *Nippert v. Shinn Farm Constr. Co.*, 223 Neb. 236, 388 N.W.2d 820 (1986).

The Nebraska Workmen's Compensation Act provides the exclusive remedy by the employee against the employer for any injury arising out of and in the course of the employment. *Johnston v. State*, 219 Neb. 457, 364 N.W.2d 1 (1985).

The Workmen's Compensation Act is to be construed liberally so that its beneficent purposes may not be thwarted by technical refinement of interpretation. *Friedeman v. State*, 215 Neb. 413, 339 N.W.2d 67 (1983).

While the act of suicide may be an independent intervening cause in some cases, it is certainly not so in those cases where the uncontrovertible evidence shows that, without the injury, there would have been no suicide; that the suicide was merely an act intervening between the injury and the death and part of

an unbroken chain of events from the injury to the death. *Friedeman v. State*, 215 Neb. 413, 339 N.W.2d 67 (1983).

If coverage exists, Workmen's Compensation Act is exclusive. *Marlow v. Maple Manor Apartments*, 193 Neb. 654, 228 N.W.2d 303 (1975).

The rule of liberal construction of the Workmen's Compensation Act applies to the law but not to the evidence. *Barbaglia v. General Motors Acceptance Corp.*, 190 Neb. 529, 209 N.W.2d 353 (1973).

The state, by its Legislature, has extensively entered the field of labor. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

Employee having compensable injury was not a malingering when he labored under mental condition firmly and honestly believing such injury to be permanent, and for which mental condition treatment had been inadequate. *Rexroat v. State*, 142 Neb. 596, 7 N.W.2d 163 (1942).

Whatever the employee's physical condition may be, the employer is bound to compensate him for any impairment of his existing ability to perform the duties in which he is engaged, by accident arising out of and in the course of his employment. *Hansen v. Paxton & Vierling Iron Works*, 138 Neb. 589, 293 N.W. 415 (1940).

When city has no authority to control the details of the work or to direct the manner and mode of doing it, it is not liable to W.P.A. worker. *Williams v. City of Wymore*, 138 Neb. 256, 292 N.W. 726 (1940).

Suspicion of fraud, arising from recovery of compensation for two former accidents of similar nature, will not defeat claim for workmen's compensation. *Klement v. H. P. Lau Co.*, 138 Neb. 144, 292 N.W. 381 (1940).

In all questions under workmen's compensation law, rules of technical construction will be avoided, and intention of Legislature will be determined from language of act as a whole. *Dobesh v. Associated Asphalt Contractors*, 138 Neb. 117, 292 N.W. 59 (1940).

An employee is not necessarily precluded from recovering compensation by the mere fact that after the injury he receives a larger sum, as wages, than his former remuneration. *Micek v. Omaha Steel Works*, 136 Neb. 843, 287 N.W. 645 (1939); 135 Neb. 449, 282 N.W. 262 (1938).

Payment of employee's wages from federal funds does not relieve city from payment of compensation, where city had entire charge of directing and controlling work. *Hendershot v. City of Lincoln*, 136 Neb. 606, 286 N.W. 909 (1939).

Statute should be liberally construed. *Ludwickson v. Central States Electric Co.*, 135 Neb. 371, 281 N.W. 603 (1938).

The relief authorized by workmen's compensation law includes purpose to prevent employee's dependents from becoming a public charge. *Westcoatt v. Lilley*, 134 Neb. 376, 278 N.W. 854 (1938).

Court will give a liberal construction to the workmen's compensation law, so that its beneficent purposes may not be thwarted by technical refinement of interpretation. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

Where a right has been created by statute which did not exist at common law, Legislature may impose restrictions thereon, and such restrictions become an integral part of the act and must be fully complied with in the manner prescribed. *Ray v. Sanitary Garbage Co.*, 134 Neb. 178, 278 N.W. 139 (1938).

If plaintiff was injured while employed in improvement work on Missouri River, remedy is provided by workmen's compensation law rather than United States Seaman's Act. *Belk v. Massman Construction Co.*, 133 Neb. 303, 275 N.W. 76 (1937).

Remedy under compensation law is exclusive where employee operating thereunder sustains an injury by reason of an accident arising out of and in the course of his employment. *Jones v. Rossbach Coal Co.*, 130 Neb. 302, 264 N.W. 877 (1936).

Malingering is defined. *Great Western Sugar Co. v. Hewitt*, 127 Neb. 790, 257 N.W. 61 (1934).

Where employee unreasonably refuses to undergo simple operation which would relieve him from disability, compensation may be suspended. *Simmerman v. Felthouser*, 125 Neb. 795, 251 N.W. 831 (1934).

Workmen's Compensation Act is one of general interest to worker and employer alike, as well as to the state, and it should be so construed that technical refinements of interpretation will not defeat its purpose. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

Workmen's Compensation Act is not applicable to a nonresident employer and a resident employee where contract of employment was made in this state for services to be performed in another state, and employer was not at the time of contract engaged in any trade, business, profession, or avocation in this state. *Watts v. Long*, 116 Neb. 656, 218 N.W. 410 (1928).

Provision for jury trial in this section does not apply to compensation cases generally. *Nosky v. Farmers Union Co-op. Assn.*, 109 Neb. 489, 191 N.W. 846 (1922).

An employee's deliberate or intentional defiance of a reasonable rule will disqualify that employee from receiving benefits if

(1) the employer has a reasonable rule designed to protect the health and safety of the employee, (2) the employee has actual notice of the rule, (3) the employee has an understanding of the danger involved in the violation of the rule, (4) the rule is kept alive by bona fide enforcement by the employer, and (5) the employee does not have a bona fide excuse for the rule violation. These factors need not be met when an employee has accidentally violated a safety rule. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

An assault on an employee at the workplace because of purely personal motivations or animosity will not arise out of the employment unless the work is determined to have exacerbated the personal dispute or facilitated an assault that would not otherwise have been committed. The question of whether the employment does facilitate such an assault is a question of fact for the trial court to determine. *Monahan v. United States Check Book Co.*, 4 Neb. App. 227, 540 N.W.2d 380 (1995).

Deceased was, as a matter of law, not an employee of defendant under Nebraska workmen's compensation law. *Pryor v. Strawn*, 73 F.2d 595 (8th Cir. 1934).

48-101.01 Mental injuries and mental illness; first responder; frontline state employee; county correctional officer; 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, frontline state employee, or county correctional officer if such 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) County correctional officer means a correctional officer employed by a high-population county whose:

- (i) Position obligates such employee to maintain order and custody of inmates in a county jail; and
- (ii) Duties involve regular and direct interaction with high-risk individuals;
- (b) Custody means:
 - (i) Under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency; or
 - (ii) In the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;
- (c) 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;
- (d) 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;
- (e) High-population county means a county with more than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;
- (f) High-risk individual means an individual in 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, a juvenile committed to a youth rehabilitation and treatment center, and a person in the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;
- (g) 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; and
- (h) 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.
- (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; Laws 2021, LB273, § 5; Laws 2021, LB407, § 1.

Effective date August 28, 2021.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB273, section 5, with LB407, section 1, to reflect all amendments.

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.

48-102 Employer's liability; negligence; action; defenses denied.

In all cases brought under sections 48-101 to 48-108, it shall not be a defense (a) that the employee was negligent, unless it shall also appear that such negligence was willful, or that the employee was in a state of intoxication; (b) that the injury was caused by the negligence of a fellow employee; or (c) that the employee had assumed the risks inherent in, or incidental to, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished.

Source: Laws 1913, c. 198, § 2, p. 579; R.S.1913, § 3643; C.S.1922, § 3025; C.S.1929, § 48-102; R.S.1943, § 48-102; Laws 1971, LB 572, § 2.

A common-law misrepresentation defense to govern when an applicant's misrepresentation will bar recovery of workers' compensation benefits is incompatible with the Nebraska Workers' Compensation Act, overruling *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979). *Bassingier v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

The statutory defense under this section applies to employees, not applicants. *Bassingier v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011).

This section eliminates from workers' compensation proceedings the three common-law defenses of contributory negligence, the fellow-servant rule, and assumption of the risk, preserving only the employee's willful negligence and intoxication as de-

fenses which the employer may raise. *Estate of Coe v. Willmes Trucking*, 268 Neb. 880, 689 N.W.2d 318 (2004).

Willful exposure to freezing weather was not a defense. *Mead v. Missouri Valley Grain, Inc.*, 178 Neb. 553, 134 N.W.2d 243 (1965).

Allegation that disability was due to employee's failure to allow normal recovery constituted charge of willful negligence. *Rexroat v. State*, 142 Neb. 596, 7 N.W.2d 163 (1942).

Defense of assumption of risk is not available. *Nedela v. Mares Auto Co.*, 110 Neb. 108, 193 N.W. 345 (1923).

Defense that plaintiff was willfully negligent was not established by evidence. *Brown v. York Water Co.*, 104 Neb. 516, 177 N.W. 833 (1920).

48-103 Employer's liability; defenses; when not available.

If an employer, as defined in section 48-106, does not carry a policy of workers' compensation insurance nor qualify as a self-insurer or, in the case of an employer who is a lessor of one or more commercial motor vehicles leased to a self-insured motor carrier, is not a party to an effective agreement pursuant to section 48-115.02, he or she loses the right to interpose the three defenses mentioned in section 48-102 in any action brought against him or her for personal injury or death of an employee.

Source: Laws 1913, c. 198, § 3, p. 579; R.S.1913, § 3644; C.S.1922, § 3026; C.S.1929, § 48-103; R.S.1943, § 48-103; Laws 1971, LB 572, § 3; Laws 1986, LB 811, § 25; Laws 1997, LB 474, § 1.

Under this section, when an employer fails to carry workers' compensation insurance or an acceptable alternative and an injured employee elects to seek damages in a common-law action, the employer "loses the right to interpose" contributory

negligence (unless the employee was intoxicated or willfully negligent), the fellow-servant rule, and assumption of the risk as defenses in the action. *Estate of Coe v. Willmes Trucking*, 268 Neb. 880, 689 N.W.2d 318 (2004).

48-104 Repealed. Laws 1971, LB 572, § 33.

48-105 Preceding sections; application.

The provisions of sections 48-101 to 48-103 shall apply to any claim for the death of an employee arising under sections 30-809 and 30-810 concerning death by wrongful act.

Source: Laws 1913, c. 198, § 5, p. 580; R.S.1913, § 3646; C.S.1922, § 3028; C.S.1929, § 48-105; R.S.1943, § 48-105; Laws 1971, LB 572, § 4; Laws 1994, LB 414, § 1.

48-106 Employer; coverage of act; excepted occupations; election to provide compensation.

(1) The Nebraska Workers' Compensation Act shall apply to the State of Nebraska, to every governmental agency created by the state, and, except as provided in this section, to every resident employer in this state and nonresident employer performing work in this state who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

(2) The act shall not apply to:

(a) A railroad company engaged in interstate or foreign commerce;

(b) Service performed by a worker who is a household domestic servant in a private residence;

(c) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees;

(d) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees, whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive. The act shall apply to an employer thirty days after the thirteenth such week; and

(e) Service performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service.

(3) If the employer is the state or any governmental agency created by the state, the exemption from the act under subdivision (2)(d) of this section does not apply.

(4) If the act applies to an employer because the employer meets the requirements of subdivision (2)(d) of this section, all unrelated employees shall be covered under the act and such employees' wages shall be considered for premium purposes.

(5) If an employer to whom the act applies because the employer meets the requirements of subdivision (2)(d) of this section subsequently does not employ ten or more unrelated, full-time employees, such employer shall continue to provide workers' compensation insurance coverage for the employees for the remainder of the calendar year and for the next full calendar year. When the required coverage period has expired, such employer may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a

corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(7) Every employer exempted under subdivision (2)(d) of this section who does not elect to provide workers' compensation insurance under subsection (6) of this section shall give all unrelated employees at the time of hiring or at any time more than thirty calendar days prior to the time of injury the following written notice which shall be signed by the unrelated employee and retained by the employer: "In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly." Failure to provide the notice required by this subsection subjects an employer to liability under and inclusion in the act for any unrelated employee to whom such notice was not given.

(8) An exclusion from coverage in any health, accident, or other insurance policy covering a person employed by an employer who is exempt from the act under this section which provides that coverage under the health, accident, or other insurance policy does not apply if such person is entitled to workers' compensation coverage is void as to such person if such employer has not elected to bring the employees of such employer within the act as provided in subsection (6) of this section.

(9) For purposes of this section:

(a) Agricultural operation means (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products;

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

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee

related to any such partner, member, or shareholder within the third degree by blood or marriage.

Source: Laws 1913, c. 198, § 6, p. 580; R.S.1913, § 3647; Laws 1917, c. 85, § 1, p. 199; C.S.1922, § 3029; Laws 1927, c. 134, § 1, p. 363; C.S.1929, § 48-106; R.S.1943, § 48-106; Laws 1945, c. 111, § 1, p. 356; Laws 1957, c. 202, § 1, p. 707; Laws 1971, LB 572, § 5; Laws 1972, LB 1298, § 1; Laws 1986, LB 811, § 26; Laws 2002, LB 417, § 1; Laws 2003, LB 210, § 1; Laws 2005, LB 13, § 1; Laws 2009, LB630, § 1; Laws 2010, LB829, § 1.

1. State and governmental agencies
2. Regular trade or business of employer
3. Railroad companies
4. Farm laborers
5. Employment in this state
6. Applicability of act
7. Miscellaneous

1. State and governmental agencies

An enlisted member of the National Guard is not an employee within the meaning of the Workmen's Compensation Act. *Lind v. Nebraska National Guard*, 144 Neb. 122, 12 N.W.2d 652 (1944).

State intended to waive its sovereignty and give its consent to be sued in actions arising under the Workmen's Compensation Act, but Legislature failed to provide manner for service of process. *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939).

One engaged by village to care for swimming pool and surrounding park is an employee within Workmen's Compensation Act. *Schou v. Village of Hildreth*, 127 Neb. 784, 257 N.W. 70 (1934).

Firemen of city of Omaha are in the service of a governmental agency and within act. *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934).

County letting contract without requiring contractor to furnish insurance policy protecting contractor's employees, is jointly liable with contractor to its employee who received compensable injury. *Standish v. Larsen-Merryweather Co.*, 124 Neb. 197, 245 N.W. 606 (1932).

Act applies to Department of Roads and Irrigation. *Eidenmiller v. State*, 120 Neb. 430, 233 N.W. 447 (1930).

County was employer of person employed in repairing bridges, although work did not take all his time. *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899 (1928).

2. Regular trade or business of employer

A workman who is injured while working on the residence property of his employer is not within the provisions of the Workmen's Compensation Act. *Retzlaff v. Dickinson*, 141 Neb. 136, 2 N.W.2d 922 (1942).

Where a painter and paperhanger worked for owner on his residence, although he had on occasions worked on rental properties, injury sustained did not arise in the regular trade, business, profession, or vocation of his employer. *Burkholder v. Clark*, 140 Neb. 590, 300 N.W. 839 (1941).

City police officer, injured while transporting passengers to and from trains, is not performing an act within the regular trade, business, or vocation of city, and is not entitled to compensation. *Coyne v. City of O'Neill*, 139 Neb. 686, 298 N.W. 547 (1941).

Where contractor hired truck driver and truck to haul gravel in fulfillment of contract with county, contractor was employer within act. *Showers v. Lund*, 123 Neb. 56, 242 N.W. 258 (1932).

One engaged in buying and shipping poultry in carload lots to distant markets is engaged in business. *Claus v. DeVere*, 120 Neb. 812, 235 N.W. 450 (1931).

Hod-carrier, injured in construction of apartment, was engaged in employer's regular business. *Bauer v. Anderson*, 114 Neb. 326, 207 N.W. 508 (1926).

Caring for buildings owned by person engaged in other business was not regular business, and employee repairing such building was not within Workmen's Compensation Act. *Kaplan v. Gaskill*, 108 Neb. 455, 187 N.W. 943 (1922).

3. Railroad companies

Employee of railroad engaged in interstate commerce is excluded. *Chicago, B. & Q. R.R. Co. v. Amack*, 112 Neb. 437, 199 N.W. 724 (1924).

4. Farm laborers

In keeping with the language of subsection (2) of this section, excepting "employers" of farm and ranch laborers, it is the nature of the employer's business which determines the exception. *Larsen v. D B Feedyards*, 264 Neb. 483, 648 N.W.2d 306 (2002).

The nature of the employer's business determines the applicability of the farm laborer exemption, and the work performed by the employee does not. One employer may engage in two separate businesses, one subject to the workers' compensation law and one exempt. *Bartunek v. Becker*, 222 Neb. 126, 382 N.W.2d 300 (1986).

Under the provisions of subsection (2) of this section, it is the nature of the employer's business which determines the exemption, and not the work performed by the employee. Employers of farm or ranch laborers are generally exempt from the provisions of the Nebraska Workmen's Compensation Act, and farm or ranch laborers injured while employed by one operating a farm or ranch are not entitled to receive any of the benefits of the Nebraska Workmen's Compensation Act. *Leppert v. Parker*, 218 Neb. 63, 352 N.W.2d 180 (1984).

The whole character of an employee's employment must be considered to determine whether an employee is a farm laborer within the meaning of the Workmen's Compensation Act, and an employee who works 45 hours per week performing the duties of cleaning pens, feeding livestock, plowing, disking, and building fences and pens on defendant's farm is a farm laborer within the act. The employee failed to meet the burden of showing that the classification of farm laborers as being exempt from the Workmen's Compensation Act's coverage had no rational basis, and therefore failed to overcome the presumption that said classification does not violate the equal protection clause of the fourteenth amendment to the U.S. Constitution. *Otto v. Hahn*, 209 Neb. 114, 306 N.W.2d 587 (1981).

Employer engaged in custom combining for public as a regular commercial business is not an employer of farm or ranch laborer. *Hawthorne v. Hawthorne*, 184 Neb. 372, 167 N.W.2d 564 (1969).

Employer of farm or ranch labor, by the act of obtaining workmen's compensation insurance, becomes an employer within meaning of this section. *Imus v. Bead Mountain Ranch, Inc.*, 183 Neb. 343, 160 N.W.2d 171 (1968).

A group of farmers operating a commercial hay grinding business was not exempt from liability. *Campos v. Tomoi*, 175 Neb. 555, 122 N.W.2d 473 (1963).

Employer of farm labor may elect to come under act. *Keith v. Wilson*, 165 Neb. 58, 84 N.W.2d 192 (1957).

Employee of livestock sales barn was not a farm or ranch laborer. *Gruber v. Stickelman*, 149 Neb. 627, 31 N.W.2d 753 (1948).

Whole character of employment must be looked to to determine whether person is farm laborer; person employed to operate a bulldozer was not. *Oliver v. Ernst*, 148 Neb. 465, 27 N.W.2d 622 (1947).

A carpenter employed by a farmer to construct a machine shed on farm did not make carpenter a farm laborer so as to exclude him from benefit of act. *Guse v. Wessels*, 132 Neb. 41, 270 N.W. 665 (1937).

Cooperative threshing association, though threshing for others, was included within the term employers of farm laborers. *Keefover v. Vasey*, 112 Neb. 424, 199 N.W. 799 (1924).

5. Employment in this state

The Nebraska Workmen's Compensation Act is not applicable where a resident employee's employment by a nonresident employer for services to be performed outside the state was neither in nor incidental to any trade, business, profession, or vocation carried on by the employer in this state. *Jensen v. Floair, Inc.*, 211 Neb. 403, 318 N.W.2d 870 (1982).

Action may be maintained against nonresident employer performing work in this state. *Rapp v. Hale*, 170 Neb. 620, 103 N.W.2d 851 (1960).

Where headquarters of employer, industry in which engaged, and residence of employee all are in Nebraska, proceedings for compensation for total injury are maintainable hereunder. *Esau v. Smith Bros.*, 124 Neb. 217, 246 N.W. 230 (1933).

Courts of Nebraska are without jurisdiction where plaintiff's employment was not in, or incidental to, any industry conducted in Nebraska. *Freeman v. Higgins*, 123 Neb. 73, 242 N.W. 271 (1932).

Workmen, engaged in Nebraska by Kansas employer, not engaged in business in Nebraska, to work in Kansas, are not within Nebraska Workmen's Compensation Act. *Watts v. Long*, 116 Neb. 656, 218 N.W. 410 (1928).

Employee, resident of Nebraska, contracting to perform labor in Iowa for Nebraska corporation and injured in Iowa, was within Nebraska Workmen's Compensation Act. *McGuire v. Phelan-Shirley Co.*, 111 Neb. 609, 197 N.W. 615 (1924).

Pursuant to subdivision (2) of section 48-115, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in this section under any contract of hire, expressed or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

48-107 Employer's liability; employee's willful negligence; burden of proof.

In all actions at law brought pursuant to sections 48-101 to 48-108 the burden of proof to establish willful negligence of the injured employee shall be on the defendant.

Source: Laws 1913, c. 198, § 7, p. 580; R.S.1913, § 3648; C.S.1922, § 3030; C.S.1929, § 48-107; R.S.1943, § 48-107.

6. Applicability of act

Pursuant to subdivision (2) of section 48-114, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in this section, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subsection (1) of this section, the Nebraska Workers' Compensation Act applies to every employer in this state, including nonresident employers performing work in this state, employing one or more employees, in the regular trade, business, profession, or vocation of such employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

7. Miscellaneous

The Nebraska Workers' Compensation Act does not affect an insurance agent's duty to act with reasonable care, and the same is true for insurance brokers. *Merrick v. Fischer, Rounds & Assocs.*, 305 Neb. 230, 939 N.W.2d 795 (2020).

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

The fact that the employer is engaged in farming does not remove from the coverage of the workers' compensation laws other businesses or occupations carried on by the employer which are otherwise under the coverage of those laws. *Bartunek v. Becker*, 222 Neb. 126, 382 N.W.2d 300 (1986).

The statutory employer provisions of section 48-116 do not supersede the exemption provisions of subsection (2) of this section. *Nussbaum v. Wright*, 217 Neb. 712, 350 N.W.2d 559 (1984).

One employer may operate two different businesses, one subject to the workmen's compensation law and one exempt, and obtain workmen's compensation insurance for the business which is subject to the law, without by that act triggering the election of coverage provisions of the Workmen's Compensation Act. *Brown v. Leavitt Lane Farm*, 215 Neb. 522, 340 N.W.2d 4 (1983).

Where plaintiff was injured while engaged in improvement work on the Missouri River, Workmen's Compensation Act provided exclusive remedy. *Belk v. Massman Construction Co.*, 133 Neb. 303, 275 N.W. 76 (1937).

Subcontractor is the only employer of employee injured in line of his duties. *Boyd v. Humphreys*, 117 Neb. 799, 223 N.W. 658 (1929).

Corporation subject to compensation is liable for injury to workman employed by independent contractor agreeing to protect corporation against liability for injuries to workmen, where such contractor was not required to procure insurance to protect his employees. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924).

Noninsuring employer is liable either for damages at common law or for compensation, at option of employee. *Avre v. Sexton*, 110 Neb. 149, 193 N.W. 342 (1923).

An insurance agent does not have an affirmative duty to tell an employer about the written notice and signature provisions contained in subsection (7) of this section. *Hansmeier v. Hansmeier*, 25 Neb. App. 742, 912 N.W.2d 268 (2018).

The burden of proving intoxication as a defense is on the employer. *Johnson v. Hahn Bros. Const. Inc.*, 188 Neb. 252, 196 N.W.2d 109 (1972).

Mere negligence of employee is not sufficient to preclude recovery, but such conduct must be shown as manifests a reckless disregard of consequences coupled with a conscious-

ness that injury will naturally or probably result. *Richards v. Abts*, 136 Neb. 741, 287 N.W. 199 (1939).

Burden is on employer to establish willful negligence, and he must prove a deliberate act knowingly done or conduct evidencing reckless indifference to his own safety on part of employee. *Hoff v. Edgar*, 133 Neb. 403, 275 N.W. 602 (1937).

48-108 Employer's liability; claim for legal services or disbursements; lien; how established; payment.

No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the Nebraska Workers' Compensation Act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by a judge of the Nebraska Workers' Compensation Court. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. When the employee's compensation is payable by the employer in periodical installments, the compensation court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

Source: Laws 1913, c. 198, § 8, p. 581; R.S.1913, § 3649; C.S.1922, § 3031; C.S.1929, § 48-108; R.S.1943, § 48-108; Laws 1974, LB 732, § 1; Laws 1975, LB 187, § 1; Laws 1978, LB 649, § 1; Laws 1986, LB 811, § 27; Laws 2010, LB908, § 1.

The Workers' Compensation Court has jurisdiction to determine a fee dispute arising out of an attorney's lien perfected pursuant to this section, regardless of whether the attorney seeking enforcement had previously been discharged. *Foster v. BryanLGH Med. Ctr. East*, 272 Neb. 918, 725 N.W.2d 839 (2007).

Attorney's fees allowed by court were ordered applied on agreement entered into under this section. *Miller v. Schlereth*, 152 Neb. 805, 42 N.W.2d 865 (1950).

Fees for plaintiff's attorneys allowed and taxed as costs are the property of the attorneys for whose benefit they are taxed. Approval by trial judge is a nonjudicial act and no notice thereof to claimant is required. *Solomon v. A. W. Farney, Inc.*, 136 Neb. 338, 286 N.W. 254 (1939).

Notice to compensation claimant is not condition precedent to approval of attorney's fees by trial judge. *Arner v. Sioux County*, 116 Neb. 394, 217 N.W. 603 (1928).

This section limits amounts attorney may lawfully charge and is constitutional as proper exercise of police power. Agreement for fees that is not approved is not enforceable. *Dysart v. Yeiser*, 110 Neb. 65, 192 N.W. 953 (1923).

The Nebraska Workers' Compensation Court does not have subject matter jurisdiction to determine whether a health care insurer or HMO is obligated to share in the cost of obtaining reimbursement when the injured worker successfully asserts a claim for workers' compensation benefits. The Nebraska Workers' Compensation Court's regulation of attorney fees and disbursement matters is limited to those which arise between the injured worker and the attorney representing the injured worker. *Kaiman v. Mercy Midlands Medical & Dental Plan*, 1 Neb. App. 148, 491 N.W.2d 356 (1992).

Limiting fees of attorneys under Workmen's Compensation Act is not unconstitutional as depriving of liberty of contract without due process. *Yeiser v. Dysart*, 267 U.S. 540 (1925).

PART II

ELECTIVE COMPENSATION

(a) GENERAL PROVISIONS GOVERNING ELECTION

48-109 Elective compensation; schedule; duty.

If both employer and employee become subject to the Nebraska Workers' Compensation Act, both shall be bound by the schedule of compensation provided in such act, which compensation shall be paid in every case of injury or death caused by accident or occupational disease arising out of and in the course of employment, except accidents caused by or resulting in any degree from the employee's willful negligence as defined in section 48-151.

Source: Laws 1913, c. 198, § 9, p. 581; R.S.1913, § 3650; C.S.1922, § 3032; C.S.1929, § 48-109; Laws 1943, c. 113, § 2, p. 397; R.S.1943, § 48-109; Laws 1986, LB 811, § 28.

1. Election
2. In course of employment
3. Not in course of employment
4. Occupational disease
5. Willful negligence
6. Miscellaneous

1. Election

A finding that one party is an "employer" under section 48-114 and a finding that the other relevant party is an "employee" under section 48-115 are necessary to engage this section, which binds the parties to the compensation schedule of the Nebraska Workers' Compensation Act. *Kaiser v. Millard Lumber, Inc.*, 255 Neb. 943, 587 N.W.2d 875 (1999).

Act of employee in electing not to come under part II of the act is binding on his dependents. *White v. National Window Cleaning Co.*, 132 Neb. 155, 271 N.W. 341 (1937).

Petition in action for damages was not defective for failure to allege that plaintiff had not elected to come under part II. *Smith v. Fall*, 122 Neb. 783, 241 N.W. 560 (1932).

2. In course of employment

The phrases in the course of and arising out of are not synonymous and impose a double condition for recovery. *Reis v. Douglas County Hospital*, 193 Neb. 542, 227 N.W.2d 879 (1975).

Act of seeking shelter from cold weather arose in the course of employment. *Appleby v. Great Western Sugar Co., Inc.*, 176 Neb. 102, 125 N.W.2d 103 (1963).

A double condition is imposed and both must exist to sustain recovery. *Simon v. Standard Oil Co.*, 150 Neb. 799, 36 N.W.2d 102 (1949).

Burden rests upon claimant to establish by a preponderance of the evidence that he sustained a personal injury by accident arising out of and in the course of his employment. *Schwabauer v. State*, 147 Neb. 620, 24 N.W.2d 431 (1946).

Injuries to one dragging roads for county, when kicked by horse after suspending work during noon hour, arose in course of employment. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

Injuries by reason of being required to work with incompetent, insane and dangerous fellow workmen arise out of employment. *Dodson v. F. W. Woolworth Co.*, 118 Neb. 276, 224 N.W. 289 (1929).

Injury from being overcome by gas, although attributable in part to occupational disease, arose out of employment. *Van Vleet v. Public Service Co. of York*, 111 Neb. 51, 195 N.W. 467 (1923).

Injury to garage employee, who fell under truck while attempting to catch ride in performing errand for employer, arose out of employment. *McCrary v. Wolff*, 109 Neb. 796, 192 N.W. 237 (1923).

Workman on way to procure materials which it was his ordinary duty to procure, to be used in his work, injured in collision with streetcar, was acting in course of employment. *Hugh Murphy Const. Co. v. Serck*, 104 Neb. 398, 177 N.W. 747 (1920); *Coster v. Thompson Hotel Co.*, 102 Neb. 585, 168 N.W. 191 (1918).

3. Not in course of employment

Workmen's Compensation Act does not authorize an award in case of injury or death from a tornado. *Crow v. The Americana Crop Hail Pool, Inc.*, 176 Neb. 260, 125 N.W.2d 691 (1964).

If employee is injured while absent from the employment for lunch, the injury does not arise out of nor in the course of employment. *Berry v. School District*, 154 Neb. 787, 49 N.W.2d 617 (1951).

Where employee abandons his job and gets another, and while going to get his tools from his old job is killed, former employer is not liable under Workmen's Compensation Act where he owed no duty in connection with return of tools. *Hammond v. Keim*, 128 Neb. 310, 258 N.W. 478 (1935).

Death of workman on destruction of building by storm, peril being common to all mankind, did not arise out of employment. *Gale v. Krug Park Amusement Co.*, 114 Neb. 432, 208 N.W. 739 (1926).

Injury in personal altercation between employees does not arise out of employment. *Urak v. Morris & Co.*, 107 Neb. 411, 186 N.W. 345 (1922).

Where employee whose duty was to use elevator in trucking meat from floor to floor in packing house, after taking truck off elevator, returned to scuffle with operator, accident did not arise out of employment. *Feda v. Cudahy Packing Co.*, 102 Neb. 110, 166 N.W. 190 (1918).

Employee assaulted by fellow workman, whether in anger or play, is not injured in course of employment. *Pierce v. Boyer-Van Kuran Lumber & Coal Co.*, 99 Neb. 321, 156 N.W. 509 (1916).

4. Occupational disease

Unexplained fall was not sufficient to show accident where workman was suffering from aortic stenosis. *Cochran v. Bellevue Bridge Commission*, 174 Neb. 761, 119 N.W.2d 292 (1963).

Existence of occupational disease before amendment to statute did not preclude recovery where disability occurred after amendment. *Hauff v. Kimball*, 163 Neb. 55, 77 N.W.2d 683 (1956).

Disability from which plaintiff was suffering lead poisoning, solely result of disease occupational in nature, was not compensable. *Ritchey v. Herdt*, 121 Neb. 874, 236 N.W. 926 (1931).

Injury attributable in part to accident is compensable, though employee was suffering from occupational disease. If injury and preexisting disease combine to produce disability, employee need not prove injury accelerated or aggravated disease. *Skelly Oil Co. v. Gaugenbaugh*, 119 Neb. 698, 230 N.W. 688 (1930).

Illness from disease arising from ordinary incidents of occupation, and reasonably resulting therefrom is not compensable. *Blair v. Omaha Ice & Cold Storage Co.*, 102 Neb. 16, 165 N.W. 893 (1917).

5. Willful negligence

Willful negligence requires showing of deliberate act knowingly done, or reckless indifference to safety. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Where defense is willful negligence of employee, it is error to exclude testimony of witness that he had warned employee of danger prior to accident. *Richards v. Abts*, 135 Neb. 347, 281 N.W. 611 (1938).

6. Miscellaneous

If coverage exists, Workmen's Compensation Act is exclusive. *Marlow v. Maple Manor Apartments*, 193 Neb. 654, 228 N.W.2d 303 (1975).

Where employee was not in any manner disabled from performing work that he had done prior to accident, claim for weekly benefits was not sustained. *Wengler v. Grosshans Lumber Co.*, 173 Neb. 839, 115 N.W.2d 415 (1962).

An assault by a fellow employee may be an accident. *Myszkowski v. Wilson & Co., Inc.*, 155 Neb. 714, 53 N.W.2d 203 (1952).

Fact that city fireman receives workmen's compensation does not deprive him of right to receive fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Mere exertion which combines with preexisting disease to produce disability is not an accident causing compensable injury. *Gilkeson v. Northern Gas Engineering Co.*, 127 Neb. 124, 254 N.W. 714 (1934).

Compensable injury can only arise while workman is engaged in or about the premises where his duties are required to be performed or his services require his presence. *Hall v. Austin Western Road Machinery Co.*, 125 Neb. 390, 250 N.W. 258 (1933).

Employee has burden of proving that personal injury was caused to the employee by an accident arising out of and in the course of his employment. *Herbert v. State*, 124 Neb. 312, 246 N.W. 454 (1933).

48-110 Elective compensation; liability; scope.

When employer and employee shall by agreement, express or implied, or otherwise as provided in section 48-112 accept the provisions of the Nebraska Workers' Compensation Act, compensation shall be made for personal injuries to or for the death of such employee by accident arising out of and in the course of his or her employment, without regard to the negligence of the employer, according to the schedule provided in such act, in all cases except when the injury or death is caused by willful negligence on the part of the employee. The burden of proof of such fact shall be upon the employer.

Source: Laws 1913, c. 198, § 10, p. 581; R.S.1913, § 3651; C.S.1922, § 3033; C.S.1929, § 48-110; R.S.1943, § 48-110; Laws 1986, LB 811, § 29.

When read with section 48-111, this section mandates that an employee surrenders his or her right to any method, form, or amount of compensation or determination thereof against his or her employer or workers' compensation insurer other than that as provided in the Nebraska Workers' Compensation Act when that employee sustains an injury, arising out of and in the course of his or her employment, that is covered by the act. *Ihm v. Crawford & Co.*, 254 Neb. 818, 580 N.W.2d 115 (1998).

Employee may not recover for injuries resulting from his willful negligence. *Bole v. S.M.S. Trucking Co.*, 187 Neb. 341, 190 N.W.2d 780 (1971).

Burden of establishing willful negligence is on employer. *Myszkowski v. Wilson & Co., Inc.*, 155 Neb. 714, 53 N.W.2d 203 (1952).

School teacher was not entitled to compensation when injured while absent from place of employment for lunch. *Berry v. School District*, 154 Neb. 787, 49 N.W.2d 617 (1951).

Where transportation furnished to employee carried him only part way to work, and he was injured while walking the remaining distance, injury did not arise out of and in the course of employment. *Lincoln Traction Co. v. Reason*, 143 Neb. 512, 10 N.W.2d 344 (1943).

Where defense is willful negligence of employee any competent evidence tending to show knowledge by employee of the

dangerous character of act which subsequently caused his death is admissible, and it was error to exclude testimony of witness that he had warned deceased of his danger. *Richards v. Abts*, 135 Neb. 347, 281 N.W. 611 (1938).

To avoid liability on ground of willful negligence, employer must prove a deliberate act knowingly done, or such conduct as evidences a reckless indifference to safety. *Hoff v. Edgar*, 133 Neb. 403, 275 N.W. 602 (1937).

Death of traveling salesman who was shot by highwayman while traveling from one town to another in furtherance of employer's business, was compensable. *Goodwin v. Omaha Printing Co.*, 131 Neb. 212, 267 N.W. 419 (1936).

Where employee was shot accidentally while engaged in aiding fellow workman who was accomplishing private purpose, injury did not arise out of employment and was not compensable hereunder. *Bergantzel v. Union Transfer Co.*, 124 Neb. 200, 245 N.W. 593 (1932).

Subcontractor, whose employee is injured while engaged in line of his duties by actionable negligence of original contractor, is employer under Workmen's Compensation Act, and original contractor is third person within meaning of statute subrogating employer to employee's or dependents' rights. *Boyd v. Humphreys*, 117 Neb. 799, 223 N.W. 658 (1929).

48-111 Elective compensation; election; effect; exemption from liability; exception.

Such agreement or the election provided for in section 48-112 shall be a surrender by the parties thereto of their rights to any other method, form, or amount of compensation or determination thereof than as provided in the Nebraska Workers' Compensation Act, and an acceptance of all the provisions of such act, and shall bind the employee himself or herself, and for compensation for his or her death shall bind his or her legal representatives, his or her surviving spouse and next of kin, as well as the employer, and the legal representatives of a deceased employer, and those conducting the business of the employer during bankruptcy or insolvency. For the purpose of this section, if the employer carries a policy of workers' compensation insurance, the term employer shall also include the insurer. The exemption from liability given an employer and insurer by this section shall also extend to all employees, officers, or directors of such employer or insurer, but such exemption given an employee, officer, or director of an employer or insurer shall not apply in any case

when the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer, or director.

Source: Laws 1913, c. 198, § 11, p. 582; R.S.1913, § 3652; C.S.1922, § 3034; C.S.1929, § 48-111; R.S.1943, § 48-111; Laws 1965, c. 277, § 1, p. 798; Laws 1975, LB 227, § 1; Laws 1986, LB 811, § 30.

- 1. Remedy exclusivity
- 2. Exemption from liability
- 3. Miscellaneous

1. Remedy exclusivity

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. *Hofferber v. City of Hastings*, 275 Neb. 503, 747 N.W.2d 389 (2008).

This section and section 48-148 are routinely referred to by the Nebraska Supreme Court as the "exclusivity" provisions of the Nebraska Workers' Compensation Act. *Bennett v. Saint Elizabeth Health Sys.*, 273 Neb. 300, 729 N.W.2d 80 (2007).

When read with section 48-110, this section mandates that an employee surrenders his or her right to any method, form, or amount of compensation or determination thereof against his or her employer or workers' compensation insurer other than that as provided in the Nebraska Workers' Compensation Act when that employee sustains an injury, arising out of and in the course of his or her employment, that is covered by the act. *Ihm v. Crawford & Co.*, 254 Neb. 818, 580 N.W.2d 115 (1998).

This section limits available remedies for injuries even when a statute is violated or crime is committed if the illegal feature of the conduct is not the causative factor in the injury. *Kopfman v. Freedom Drilling Co.*, 220 Neb. 323, 370 N.W.2d 89 (1985).

Where plaintiff elected to take under the statute, and was paid compensation benefits by insurer, he cannot recover anything more in contract or tort. *Pettigrew v. Home Ins. Co.*, 191 Neb. 312, 214 N.W.2d 920 (1974).

In compensation cases, the statute prescribes the entire scope of the right and remedy, and the parties are limited to the adjective procedure either expressly or by necessary implication set forth therein. *McIntosh v. Standard Oil Co.*, 121 Neb. 92, 236 N.W. 152 (1931).

Employee who, by not affirmatively rejecting, has elected to be bound by Workmen's Compensation Act, has surrendered right of action against employer for injury through machine being left unguarded in violation of factory act. *Navracel v.*

Cudahy Packing Co., 109 Neb. 506, 191 N.W. 659, 193 N.W. 768 (1923).

2. Exemption from liability

Where a surviving husband's deceased wife's employer was immune under section 48-148 from the surviving husband's suit against it for bystander negligent infliction of emotional distress, a fellow employee of the deceased wife was also immune from the surviving husband's suit because under this section, the employer's immunity extended to the deceased wife's fellow employee. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

The exemption from liability given an employer and insurer by this section does not include employer's underinsured motorist carrier, even though said insurance carrier is also employer's workers' compensation carrier. *Muller v. Tri-State Ins. Co.*, 252 Neb. 1, 560 N.W.2d 130 (1997).

The portion of this statute that exempts from liability negligent coemployees of an injured employee does not violate the open access provision of Neb. Const. art. I, sec. 13. *Peterson v. Cisper*, 231 Neb. 450, 436 N.W.2d 533 (1989).

3. Miscellaneous

Receipt and acceptance of workmen's compensation by city fireman does not bar his right to a fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Parent's right of action for injury to minor son is not barred by Workmen's Compensation Act. *Allen v. Trester*, 112 Neb. 515, 199 N.W. 841 (1924).

An employee who has failed to file an election not to come under act has no right of action for damages for negligence of employer. *Nedela v. Mares Auto Co.*, 106 Neb. 883, 184 N.W. 885 (1921).

Whether pension received from city by widow of deceased policeman is compensation, is not decided. *Good v. City of Omaha*, 102 Neb. 654, 168 N.W. 639 (1918).

48-112 Elective compensation; presumption.

In the occupations described in section 48-106, all contracts of employment shall be presumed to have been made with reference and subject to the Nebraska Workers' Compensation Act. Every such employer and every employee is presumed to accept and come under such sections.

Source: Laws 1913, c. 198, § 12, p. 582; R.S.1913, § 3653; Laws 1917, c. 85, § 2, p. 199; C.S.1922, § 3035; C.S.1929, § 48-112; Laws 1935, c. 57, § 17, p. 196; C.S.Supp.,1941, § 48-112; R.S.1943, § 48-112; Laws 1971, LB 572, § 6; Laws 1986, LB 811, § 31.

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. *Hofferber v. City of Hastings*, 275 Neb. 503, 747 N.W.2d 389 (2008).

Employee must be given notice under this section. *Imus v. Bead Mountain Ranch, Inc.*, 183 Neb. 343, 160 N.W.2d 171 (1968).

Sale of seed corn upon a commission basis did not constitute salesman an employee. *Bohy v. Pfister Hybrid Co.*, 179 Neb. 337, 138 N.W.2d 23 (1965).

Election of employee not to come under part II of act is binding on his dependents. *White v. National Window Cleaning Co.*, 132 Neb. 155, 271 N.W. 341 (1937).

Where it was not disclosed whether contract was made before or after taking effect of act, presumption that act was applicable did not arise. *Smith v. Fall*, 122 Neb. 783, 241 N.W. 560 (1932).

Both parties are presumed to have contracted with reference to Workmen's Compensation Act and subject thereto. *Dietz Club v. Niehaus*, 110 Neb. 154, 193 N.W. 344 (1923); *Avre v. Sexton*, 110 Neb. 149, 193 N.W. 342 (1923); *Nedela v. Mares Auto Co.*, 110 Neb. 108, 193 N.W. 345 (1923); *Nosky v. Farmers Union Co-op. Assn.*, 109 Neb. 489, 191 N.W. 846 (1922).

Employer cannot take advantage of own fault to detriment of employee. *Dietz Club v. Niehaus*, 110 Neb. 154, 193 N.W. 344 (1923).

Noninsuring employer is liable either for damages at common law or compensation, at election of employee. *Avre v. Sexton*, 110 Neb. 149, 193 N.W. 342 (1923); *Nedela v. Mares Auto Co.*, 110 Neb. 108, 193 N.W. 345 (1923).

Minor employee may elect under Workmen's Compensation Act. *Navracel v. Cudahy Packing Co.*, 109 Neb. 506, 191 N.W. 659 (1922).

48-113 Repealed. Laws 1971, LB 572, § 33.

48-114 Employer, defined.

The following shall constitute employers subject to the Nebraska Workers' Compensation Act: (1) The state and every governmental agency created by it; and (2) every person, firm, or corporation, including any public service corporation, who is engaged in any trade, occupation, business, or profession as described in section 48-106, and who has any person in service under any contract of hire, express or implied, oral or written.

Source: Laws 1913, c. 198, § 14, p. 583; R.S.1913, § 3655; C.S.1922, § 3037; C.S.1929, § 48-114; R.S.1943, § 48-114; Laws 1971, LB 572, § 7; Laws 1986, LB 811, § 32.

A finding that one party is an "employer" under this section and a finding that the other relevant party is an "employee" under section 48-115 are necessary to engage section 48-109, which binds the parties to the compensation schedule of the Nebraska Workers' Compensation Act. *Kaiser v. Millard Lumber, Inc.*, 255 Neb. 943, 587 N.W.2d 875 (1999).

In order to transfer liability from the general employer of a loaned employee to a borrowing employer, there must be some consensual arrangement sufficient to create a new employer-employee relationship. *Shamburg v. Shamburg*, 153 Neb. 495, 45 N.W.2d 446 (1950).

Cement finisher and plasterer, engaged to do specific work, where nothing was said about pay and for previous work payment had been made at hourly rate, and where owner directed how work should be done, is an employee and not an independent contractor. *Peterson v. Christenson*, 141 Neb. 151, 3 N.W.2d 204 (1942).

General provisions of compensation act are applicable to the state and every governmental agency created by it. *Dobesh v. Associated Asphalt Contractors, Inc.*, 138 Neb. 117, 292 N.W. 59 (1940).

Laborer hired by informal action of county board was county employee while working on county road project. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

Relation of employee and employer is not defeated by fact that employee receives the work under a plan of the federal government designed primarily to relieve unemployment. *Hendershot v. City of Lincoln*, 136 Neb. 606, 286 N.W. 909 (1939).

One buying and shipping poultry in carload lots to distant markets is engaged in business. Compensation law applies to caretaker of carload of live poultry being shipped to market in another state. *Claus v. DeVere*, 120 Neb. 812, 235 N.W. 450 (1931).

Subcontractor is employer of workman injured by negligence of original contractor, in line of duties for which he is employed by subcontractor. *Boyd v. Humphreys*, 117 Neb. 799, 223 N.W. 658 (1929).

Where employer, engaged in business in Nebraska, hires resident within state for services in another state incident to employer's business in Nebraska, Nebraska workmen's compensation law applies. *Watts v. Long*, 116 Neb. 656, 218 N.W. 410 (1928).

Corporation subject to Workmen's Compensation Act is liable as employer to injured workman employed by independent contractor, who has agreed to protect corporation from such liability, where contractor is not required to procure insurance for protection of employees. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924).

Pursuant to subdivision (2) of this section, employers subject to the Nebraska Workers' Compensation Act include every person, firm, or corporation who is engaged in any trade, occupation, business, or profession as described in section 48-106, and who has any person in service under any contract of hire, express or implied, oral or written. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

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.

Cross References

Professional Employer Organization Registration Act, see section 48-2701.

1. State and governmental agencies
2. Employer's regular business
3. Casual employment
4. Independent contractor
5. Employee
6. Miscellaneous

1. State and governmental agencies

Member of posse called into service by sheriff was entitled to compensation. *Anderson v. Bituminous Casualty Co.*, 155 Neb. 590, 52 N.W.2d 814 (1952).

To authorize recovery as a fireman under this section, it must appear: (1) That there was a regularly organized fire department as distinguished from an unorganized group; (2) that the injured workman was a member of such organization; and (3) that he was recommended by the chief of the fire department and confirmed by the governing board of the municipality. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Terms employee and workman include every person in the service of the state or of any governmental agency created by it, under any appointment or contract of hire. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

While state intended to waive its sovereignty and to give consent to be sued under Workmen's Compensation Act, failure to provide manner of service of process, prior to 1940 amendment, rendered state immune. *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939).

Employee of city on W.P.A. project is an employee of city under compensation act. *Hendershot v. City of Lincoln*, 136 Neb. 606, 286 N.W. 909 (1939).

Fireman of city of Omaha was entitled to benefits of workmen's compensation law. *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934).

Employee of county in connection with maintenance and protection of bridges had compensable status as employee. *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899 (1928).

Fireman employed by city has compensable status. *City of Fremont v. Lea*, 115 Neb. 565, 213 N.W. 820 (1927).

Employee of National Guard is entitled to compensation. *Nebraska Nat. Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

Under former law, excluding from act those whose employment was not for the purpose of gain or profit, employees of governmental agencies were not entitled to compensation, such as a janitor employed by city school district. *Ray v. School Dist. of Lincoln*, 105 Neb. 456, 181 N.W. 140 (1920).

Police are protected by act. *Rooney v. City of Omaha*, 105 Neb. 447, 181 N.W. 143 (1920).

2. Employer's regular business

A carpenter employed by farmer to build machine shop on farm is not in the course of employer's occupation within

meaning of Workmen's Compensation Act. *Guse v. Wessels*, 132 Neb. 41, 270 N.W. 665 (1937).

Hod-carrier injured in construction of apartment was engaged in employer's regular business. *Bauer v. Anderson*, 114 Neb. 326, 207 N.W. 508 (1926).

Painting building of wholesale drug corporation was work within usual course of trade. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924).

Preparing for encampment of National Guard was regular business. *Nebraska Nat. Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

Caring for buildings owned by person engaged in other business is not regular business, and workman injured in repairing same was not entitled to compensation. *Kaplan v. Gaskill*, 108 Neb. 455, 187 N.W. 943 (1922).

3. Casual employment

Employee hired for a day at a time on any sale day by livestock sales barn was not a casual employee. *Gruber v. Stickelman*, 149 Neb. 627, 31 N.W.2d 753 (1948).

Where employment is casual and not within the trade, business, profession, or occupation of the employer, recovery cannot be had under Workmen's Compensation Act. *McConnell v. Johnston*, 139 Neb. 619, 298 N.W. 346 (1941).

The term casual is construed to mean occasional, coming at certain times without regularity, in distinction from stated or regular. *Hiestand v. Ristau*, 135 Neb. 881, 284 N.W. 756 (1939).

Workman cleaning snow from street intersections and suffering injury, was not casual employee and was entitled to compensation hereunder. *Sentor v. City of Lincoln*, 124 Neb. 403, 246 N.W. 924 (1933).

Employment was not casual. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924); *Nebraska Nat. Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924); *Nosky v. Farmers Union Co-op. Assn.*, 109 Neb. 489, 191 N.W. 846 (1922); *Kaplan v. Gaskill*, 108 Neb. 455, 187 N.W. 943 (1922); *Nedela v. Mares Auto Co.*, 106 Neb. 883, 184 N.W. 885 (1921).

Where a person enters the employment of another to render a particular service that is not continuous or regular but only occasional or incidental to the business, the employment is casual. *Petrow & Giannou v. Shewan*, 108 Neb. 466, 187 N.W. 940 (1922).

Unloading coal cars at irregular intervals is casual employment. *Bridger v. Lincoln Feed & Fuel Co.*, 105 Neb. 222, 179 N.W. 1020 (1920).

4. Independent contractor

Person who contracts to supply all labor, construct a barn according to a plan furnished, furnishes own tools, and receives a definite amount for the work done, is an independent contractor. *Lowe v. Chicago Lumber Co.*, 135 Neb. 735, 283 N.W. 841 (1939).

Person who contracted to unload coal at specified price per ton, with right to employ his own assistants and determine how work should be done, was an independent contractor. *Prescher v. Baker Ice Machine Co.*, 132 Neb. 648, 273 N.W. 48 (1937).

Independent contractor is defined. *Hines v. Martel Telephone Co.*, 127 Neb. 398, 255 N.W. 233 (1934).

Solicitor for advertising contracts on percentage basis, paying own traveling expenses and working without control or direction from employer, was not employee within meaning of this act. *Johnston v. Smith*, 123 Neb. 716, 243 N.W. 894 (1932).

Evidence established that deceased, owner and manager of insurance agency, was independent contractor. *Priest v. Business Men's Protective Assn.*, 117 Neb. 198, 220 N.W. 255 (1928).

Contractor for construction of highway is independent contractor. *Potter v. Scotts Bluff County*, 112 Neb. 318, 199 N.W. 507 (1924).

Plumber is an independent contractor, and not an employee within Workmen's Compensation Act. *Petrov & Giannou v. Shewan*, 108 Neb. 466, 187 N.W. 940 (1922).

One employed by a contractor as superintendent of construction is not an independent contractor. *Otis Elevator Co. v. Miller & Paine*, 240 F. 376 (8th Cir. 1917).

5. Employee

Officers of a corporation are within the definition of "employee" for purposes of the Nebraska workers' compensation law. *Bituminous Casualty Corp. v. Deyle*, 225 Neb. 82, 402 N.W.2d 859 (1987).

While one entering into a contract for hire in this state for work to be performed elsewhere, standing alone, may be a statutory employee under the provisions of subsection (2)(c) of this section, unless the employer, who is a nonresident, is performing work in this state, it is not a statutory employer as defined by sections 48-114 and 48-106(1). Absent a statutory employer, the provisions of section 48-101 have no application. *Jensen v. Floair*, 212 Neb. 740, 326 N.W.2d 19 (1982).

Under the facts, the claimant was too involved with the ownership and management of the business to be considered an employee. *Williams v. Williams Janitorial Service*, 207 Neb. 344, 299 N.W.2d 160 (1980).

Under the facts of this case, the Workmen's Compensation Court was clearly wrong in finding that the two defendants were joint employers of the plaintiff but was correct in finding an employer-employee relationship between one of the defendants and the plaintiff. *White v. Western Commodities, Inc.*, 207 Neb. 75, 295 N.W.2d 704 (1980).

Employee, as distinguished from a servant generally, must serve under a contract of hire. *Shamburg v. Shamburg*, 153 Neb. 495, 45 N.W.2d 446 (1950).

Truck driver, owning and operating his own truck and paid according to amount of gravel hauled, but subject to order and directions of owner of gravel pit, was employee entitled to compensation. *Westcoatt v. Lilley*, 134 Neb. 376, 278 N.W. 854 (1938).

Volunteer firemen in village are not employees of village within workmen's compensation law until they have been recommended for membership by chief of the fire department and been confirmed by chairman and board of trustees. *Eagle Indemnity Co. v. Village of Creston*, 129 Neb. 850, 263 N.W. 220 (1935).

One engaged by village to care for swimming pool and park whose compensation was twenty dollars a week plus receipts from pool, was an employee. *Schou v. Village of Hildreth*, 127 Neb. 784, 257 N.W. 70 (1934).

Village marshal was not an employee within meaning of Workmen's Compensation Act. *Suverkkrubbe v. Village of Fort Calhoun*, 127 Neb. 472, 256 N.W. 47 (1934).

Salesman selling on a commission is an employee and not independent contractor. *Aeschleman v. Haschenburger Co.*, 127 Neb. 207, 254 N.W. 899 (1934).

Truck owner, engaged by contractor furnishing gravel for county highway, was not independent contractor but an employee, and county letting contract without requiring contractor to furnish insurance policy protecting contractor's employees, was jointly liable with contractor to its employees who received compensable injury. *Standish v. Larsen-Merryweather Co.*, 124 Neb. 197, 245 N.W. 606 (1932).

Where plaintiff did repair work on call from time to time for hardware store, under its orders and direction, although he furnished his own tools and equipment, he was an employee within meaning of this section. *Cole v. Minnick*, 123 Neb. 871, 244 N.W. 785 (1932).

Whether party is employee or independent contractor must be determined from facts of particular case. Truck driver hauling gravel for county highway was an employee hereunder. *Showers v. Lund*, 123 Neb. 56, 242 N.W. 258 (1932).

Caretaker of live poultry being shipped to market in another state is employee, not independent contractor. *Claus v. DeVere*, 120 Neb. 812, 235 N.W. 450 (1931).

Every person in the employ of the state or a governmental agency thereof is an employee within the meaning of the act. *Eidenmiller v. State*, 120 Neb. 430, 233 N.W. 447 (1930).

Where workman engaged in dragging roads for county was injured by horse while caring for it during noon hour, accident arose out of and in course of employment and was compensable hereunder. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

Pursuant to subsection (2) of this section, illegal aliens are included in the definition of employees or workers. *Visoso v. Cargill Meat Solutions*, 18 Neb. App. 202, 778 N.W.2d 504 (2009).

Pursuant to subdivision (2) of this section, the terms "employee" and "worker" do not include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

Pursuant to subdivision (2) of this section, under the Nebraska Workers' Compensation Act, an "employee" or "worker" is defined as 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. *Morin v. Industrial Manpower*, 13 Neb. App. 1, 687 N.W.2d 704 (2004).

6. Miscellaneous

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Where a claimant is under a conditional offer of employment at the time of an alleged injury, the Workers' Compensation Court does not have jurisdiction, pursuant to this section, to make a determination of compensability. *Gebhard v. Dixie Carbonic*, 261 Neb. 715, 625 N.W.2d 207 (2001).

A finding that one party is an "employer" under section 48-114 and a finding that the other relevant party is an "employee" under this section are necessary to engage section 48-109, which binds the parties to the compensation schedule of the Nebraska Workers' Compensation Act. *Kaiser v. Millard Lumber, Inc.*, 255 Neb. 943, 587 N.W.2d 875 (1999).

Subsection (2) of this section recognizes that a contract for hire may be expressed or implied, including a contract with minors. *Larson v. Hometown Communications, Inc.*, 248 Neb. 942, 540 N.W.2d 339 (1995).

Under subsection (2) of this section, the right to recover workers' compensation benefits is in the employee, even if the

employee is a minor. *Lawson v. Smith*, 241 Neb. 639, 489 N.W.2d 566 (1992).

Under the facts of this case, the claimant was a loaned employee but there was no consensual relationship sufficient to create a new employer-employee relationship. Therefore, the lending employer remained liable for his workmen's compensation. *B & C Excavating Co. v. Hiner*, 207 Neb. 248, 298 N.W.2d 155 (1980).

Minor driving truck loaded with crude oil was legally permitted to work. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

A working partner is not entitled to compensation as an employee. *Rasmussen v. Trico Feed Mills*, 148 Neb. 855, 29 N.W.2d 641 (1947).

Officer of township engaging in removal of obstructions from highway although not part of his official duties, was not employee hereunder. *Vandenburg v. Center Township*, 123 Neb. 544, 243 N.W. 636 (1932), affirmed on rehearing, 124 Neb. 790, 248 N.W. 310 (1933).

Salesman, injured in Iowa, where he was hired, his work being directed from Omaha office, was covered by Nebraska Workmen's Compensation Act. *Skelly Oil Co. v. Gaugenbaugh*, 119 Neb. 698, 230 N.W. 688 (1930).

Minor employee, between fourteen and sixteen, may maintain action at common law for injuries while employed in laundry, against employer failing to procure employment certificate, and such minor need not have been classified in order to sue. *Benner v. Evans Laundry Co.*, 117 Neb. 701, 222 N.W. 630 (1929).

Nebraska Workmen's Compensation Act does not apply to workman engaged in Nebraska by Kansas employer to work in Kansas, where injured. *Watts v. Long*, 116 Neb. 656, 218 N.W. 410 (1928).

Corporation subject to Workmen's Compensation Act is liable to workman employed by independent contractor, where insurance was not required. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924).

Provision of this section restricting parent's right of recovery for injuries to minor was unconstitutional, as not germane. *Allen v. Trester*, 112 Neb. 515, 199 N.W. 841 (1924).

The record contained sufficient evidence to support the trial judge's conclusion that the worker was self-employed and that the worker did not comply with subsection (10) of this section. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

48-115.01 Employee; extend coverage; when.

Sections 48-115, 48-115.01, and 48-146 shall be so construed as to effectuate their general purpose to extend workers' compensation coverage to additional employees and officers as soon as the same may be done under the Constitution of Nebraska.

Source: Laws 1967, c. 291, § 3, p. 796; Laws 1986, LB 811, § 34.

48-115.02 Lessor of commercial motor vehicles; agreement with self-insured motor carrier; authorized; effect.

An employer who is a lessor of one or more commercial motor vehicles leased to a self-insured motor carrier, may agree with the self-insured motor carrier that benefits under the Nebraska Workers' Compensation Act with respect to personal injury or death to the driver or drivers employed by such lessor caused by accident or occupational disease arising out of and in the course of performing services for the self-insured motor carrier in connection with such lease shall be paid by the self-insured motor carrier in the same manner and to the same extent as benefits under the Nebraska Workers' Compensation Act are paid to or on behalf of employees of the self-insured motor carrier. To participate in an agreement under this section 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 agreement shall (1) constitute compliance by such lessor with the requirements of section 48-145 with respect to such driver or drivers, but only insofar as liability for personal injury or death to the driver or drivers employed by such lessor caused 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 is concerned, (2) 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 (3) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to such lessor, the driver or drivers employed by such lessor, and the self-insured motor carrier with respect

to personal injury or death caused to such driver or drivers 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 an agreement is effective.

Source: Laws 1997, LB 474, § 3.

(b) RIGHTS AND LIABILITIES OF THIRD PERSONS

48-116 Employers; evasion of law; what constitutes; exceptions.

Any person, firm, or corporation creating or carrying into operation any scheme, artifice, or device to enable him or her, them, or it to execute work without being responsible to the workers for the provisions of the Nebraska Workers' Compensation Act shall be included in the term employer, and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of such act. This section, however, shall not be construed as applying to an owner who lets a contract to a contractor in good faith, or a contractor, who, in good faith, lets to a subcontractor a portion of his or her contract, if the owner or principal contractor, as the case may be, requires the contractor or subcontractor, respectively, to procure a policy or policies of insurance from an insurance company licensed to write such insurance in this state, which policy or policies of insurance shall guarantee payment of compensation according to the Nebraska Workers' Compensation Act to injured workers.

Source: Laws 1913, c. 198, § 16, p. 584; R.S.1913, § 3657; C.S.1922, § 3039; C.S.1929, § 48-116; R.S.1943, § 48-116; Laws 1986, LB 811, § 35.

- 1. Scheme, artifice, or device
- 2. Carrying of insurance
- 3. Effect of election
- 4. Miscellaneous

1. Scheme, artifice, or device

There was insufficient evidence presented by the plaintiff to prove that the defendant employed a scheme, artifice, or device by either conferring the actual employer with apparent authority through manifestations to the homeowner or entering a joint venture with the actual employer. *Kohout v. Bennett Constr.*, 296 Neb. 608, 894 N.W.2d 821 (2017).

There was no evidence in this case that the contract between the parties that controlled their relationship was a sham to conceal the true arrangement of the parties. *Spulak v. Estep*, 216 Neb. 523, 344 N.W.2d 475 (1984).

School (an owner of property on which the work is performed) was not liable as a statutory employer by virtue of section 48-116 where the work being done by the independent contractor would not ordinarily be done by employees of the owner in view of the owner's past practices and the practices of employers in comparable businesses, regardless of whether the owner's employees could have done the work. Overruling a portion of *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924). *Franklin v. Pawley*, 215 Neb. 624, 340 N.W.2d 156 (1983).

Dealer's agreement for sale of seed corn was not an arrangement to evade provisions of Workmen's Compensation Act. *Bohy v. Pfister Hybrid Co.*, 179 Neb. 337, 138 N.W.2d 23 (1965).

Burden is on workman to prove by a preponderance of evidence that employer set up a scheme, artifice, or device to defeat provisions of workmen's compensation law. *O'Brien v. Barnard*, 145 Neb. 596, 17 N.W.2d 611 (1945).

Owner of residence, who employs workman to remodel and move it, is not an employer within the Workmen's Compensation Act, even though the sole income of the owner is derived from rental of property. *Retzlaff v. Dickinson*, 141 Neb. 136, 2 N.W.2d 922 (1942).

Where liability would not attach if employment was direct, proviso constituting as employer person using scheme, artifice, or device to escape responsibility does not apply. *McConnell v. Johnston*, 139 Neb. 619, 298 N.W. 346 (1941).

Where city furnished materials and equipment for a W.P.A. project, but had no authority to control the details of the work or to direct the mode and manner of doing it, the arrangement did not constitute a device to enable the city to execute work without being responsible. *Williams v. City of Wymore*, 138 Neb. 256, 292 N.W. 726 (1940).

Scheme, artifice, or device do not necessarily imply fraud, and agreement of independent contractor to protect corporation employing him from liability for injuries to employees is a device. *Sherlock v. Sherlock*, 112 Neb. 797, 201 N.W. 645 (1924).

A statutory employer is a principal who employs a scheme, artifice, or device to avoid workmen's compensation law. *Petznick v. United States*, 575 F.Supp. 698 (D. Neb. 1983).

2. Carrying of insurance

When one employs an uninsured contractor, he becomes an employer under the terms of the Workmen's Compensation Act, and is entitled to the protection of the provisions thereof as to

what acts are covered and what are not. *Wilbur v. Adams Lumber Co.*, 140 Neb. 48, 299 N.W. 268 (1941).

The liability of a third party for failing to require a contractor to carry compensation insurance is an imputed one, and separate notice of accident and claim for compensation from that given to contractor is not required. *Dobesh v. Associated Asphalt Contractors, Inc.*, 138 Neb. 117, 292 N.W. 59 (1940).

An unperformed agreement by contractor to carry compensation insurance does not relieve owner from liability. *Hiestand v. Ristau*, 135 Neb. 881, 284 N.W. 756 (1939).

Owner of building, used in conducting owner's business, who contracts with contractor for certain repairs to said building is an employer within the terms of statute unless it be shown that the contractor was required to procure compensation insurance for protection of his employees. *New Masonic Temple Assn. v. Globe Indemnity Co.*, 134 Neb. 731, 279 N.W. 475 (1938).

Owner of building used in conducting owner's business who enters into contract with contractor for certain repairs is an employer within meaning of law unless it be shown that the contractor was required to procure compensation insurance for protection of his employees. *Jones v. Rossbach Coal Co.*, 130 Neb. 302, 264 N.W. 877 (1936).

Where evidence failed to establish that minor son had been emancipated or that direct contract of hire existed between father and son, county which had contracted with father to do road work was not liable to minor because it failed to require the father to carry insurance. *Holt County v. Mullen*, 126 Neb. 102, 252 N.W. 799 (1934).

County letting contract without requiring contractor to furnish insurance policy protecting contractor's employees, is jointly liable with contractor to its employee who received compensable injury. *Standish v. Larsen-Merryweather Co.*, 124 Neb. 197, 245 N.W. 606 (1932).

Section does not include owner who requires contractor to take out compensation insurance, or contractor who requires subcontractor to do so. *Matthews v. G. A. Crancer Co.*, 117 Neb. 805, 223 N.W. 661 (1929).

Contention that defendants became employer within compensation law, by failure to require insurance to be taken out, was not sustained by evidence. *Petrow & Giannou v. Shewan*, 108 Neb. 466, 187 N.W. 940 (1922).

48-117 Employers; evasion of law; compensation; calculation.

When compensation is claimed from or proceedings taken against a person, firm, or corporation under section 48-116, the compensation shall be calculated with reference to the wage the worker was receiving from the person by whom he or she was immediately employed at the time of the injury.

Source: Laws 1913, c. 198, § 17, p. 585; R.S.1913, § 3658; C.S.1922, § 3040; C.S.1929, § 48-117; R.S.1943, § 48-117; Laws 1986, LB 811, § 36.

Where the wage is certain, employment is continuous, and contract of hire is definite, compensation will be computed according to the terms of contract in force at the time of the accident. *Redfern v. Safeway Stores, Inc.*, 145 Neb. 288, 16 N.W.2d 196 (1944).

Injured workman, working only one day in week, was only entitled to compensation upon basis of amount actually paid. *Johnsen v. Benson Food Center*, 143 Neb. 421, 9 N.W.2d 749 (1943).

48-118 Third-party claims; subrogation.

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of

3. Effect of election

An employee who has properly elected not to come under part II of the Workmen's Compensation Act, cannot recover compensation from owner and owner does not become employer, even though owner does not require immediate employer to carry compensation insurance. *White v. National Window Cleaning Co.*, 132 Neb. 155, 271 N.W. 341 (1937).

4. Miscellaneous

The party claiming to be an employee under this section has the burden of proof to show that he or she is in fact an employee of the subcontractor and that the principal contractor has failed to ensure that the subcontractor carries workers' compensation insurance. *Aboytes-Mosqueda v. LFA Inc.*, 306 Neb. 277, 944 N.W.2d 765 (2020).

The statutory employer provisions of this section do not supersede the exemption provisions of section 48-106(2). *Nussbaum v. Wright*, 217 Neb. 712, 350 N.W.2d 559 (1984).

General test of whether work being done by an independent contractor is within this section is whether the work would ordinarily be done by employees of the owner in view of the owner's past practices and the practices of employers in comparable businesses. *Rogers v. Hansen*, 211 Neb. 132, 317 N.W.2d 905 (1982).

A statutory employer who pays benefits under the joint and several liability created by this section is entitled to indemnity from the actual employer. *Duffy Brothers Constr. Co. v. Pistone Builders, Inc.*, 207 Neb. 360, 299 N.W.2d 170 (1980).

Immediate employer is not a necessary party to a proceeding against a statutory employer. *Gardner v. Kothe*, 172 Neb. 364, 109 N.W.2d 405 (1961).

Independent contractor employing farm labor was not subject to act. *Keith v. Wilson*, 165 Neb. 58, 84 N.W.2d 192 (1957).

This section has no application to the relation of a bona fide vendor and vendee. *Heider v. Stoughton*, 150 Neb. 741, 35 N.W.2d 814 (1949).

County was employer of workman on county road project, even though workman was hired by foreman employed by city and even though no record was made of oral authorization to employ help. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

Owners of building may be liable as third persons for death of workman through their negligence while in service of lessee's contractor. *Tralle v. Hartman Furn. & Carpet Co.*, 116 Neb. 418, 217 N.W. 952 (1928).

Receipt and acceptance of workmen's compensation by city fireman does not deprive him of right to fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Where contract was for thirty hours a week at fifty cents an hour, compensation award on basis of weekly wage of thirty dollars was error. *Drum v. Omaha Steel Works*, 129 Neb. 273, 261 N.W. 351 (1935).

the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents and shall be treated as an advance payment by the employer on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any compensation paid.

Source: Laws 1913, c. 198, § 18, p. 585; R.S.1913, § 3659; C.S.1922, § 3041; Laws 1929, c. 135, § 1, p. 489; C.S.1929, § 48-118; R.S.1943, § 48-118; Laws 1963, c. 283, § 1, p. 844; Laws 1986, LB 811, § 37; Laws 1994, LB 594, § 1; Laws 1997, LB 854, § 1; Laws 2000, LB 1221, § 2; Laws 2005, LB 13, § 2; Laws 2005, LB 238, § 2.

- 1. Who is third person
- 2. Refusal of employer to sue
- 3. Suit by employee
- 4. Subrogation
- 5. Choice of law
- 6. Notice provisions
- 7. Miscellaneous

1. Who is third person

There is a strong presumption that a parent company is not the employer of its subsidiary's employees. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

"Third person" under the Nebraska Workers' Compensation Act includes any person other than the employer or those whom the Nebraska Workers' Compensation Act makes an employer. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

"Third person" under the Nebraska Workers' Compensation Act is an entity with which there is no employer-employee relationship. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

An employee can bring suit against a third party at any time, provided that his or her employer be made a party if that employer has paid compensation benefits to the employee. *Po-linski v. Omaha Pub. Power Dist.*, 251 Neb. 14, 554 N.W.2d 636 (1996).

Employee may sue third person for injuries received, but employer having paid compensation must be made a party. *Niemeyer v. Forburger*, 172 Neb. 876, 112 N.W.2d 276 (1961).

Employer may be made party to suit by employee against third person. *Vontress v. Ready Mixed Concrete Co.*, 170 Neb. 789, 104 N.W.2d 331 (1960).

Owner requiring contractor to take out compensation insurance is third person as respects employees of contractor. *Mathews v. G. A. Crancer Co.*, 117 Neb. 805, 223 N.W. 661 (1929).

Subcontractor is immediate employer of his workmen and all others are third parties even though interested in enterprise. *Boyd v. Humphreys*, 117 Neb. 799, 223 N.W. 658 (1929).

A third-party settlement is deemed compensation. *Thomas v. Lincoln Public Schools*, 9 Neb. App. 965, 622 N.W.2d 705 (2001).

2. Refusal of employer to sue

On refusal by employer liable for compensation to sue third person for negligence resulting in injury, not death, of employee, latter may sue in own behalf, and consent by employer to employee's action is equivalent to refusal. *Luckey v. Union P. R. Co.*, 117 Neb. 85, 219 N.W. 802 (1928).

Right to bring action rests with employer until he has neglected or refused to sue. *O'Donnell v. Baker Ice Mach. Co.*, 114 Neb. 9, 205 N.W. 561 (1925).

3. Suit by employee

An employer's vested subrogation interest in settlement proceeds is not extinguished when the injured employee pursued the claim against the alleged tort-feasor out of time. *Combined Insurance v. Shurter*, 258 Neb. 958, 607 N.W.2d 492 (2000).

If an employer is not joined in an action, there must be a recovery before the nonjoined employer is liable for attorney fees; joined parties may be liable for costs even if there is no recovery. In apportioning cost pursuant to this section, the critical factor is not whether there is a recovery, but whether the employer has participated sufficiently in the litigation to be considered "joined". *Janssen v. Tomahawk Oil Co., Ltd.*, 254 Neb. 370, 576 N.W.2d 787 (1998).

Employee's right of action against third persons for negligence survives death of wrongdoer. *Rehn v. Bingaman*, 151 Neb. 196, 36 N.W.2d 856 (1949).

Section does not prevent employee from suing third party responsible for his injury in his own name but requires that employer, having paid compensation, be made party. *Oliver v. Nelson*, 128 Neb. 160, 258 N.W. 69 (1934).

If workman, injured by negligence of third party, obtains assignment from employer of right to bring action, it may be maintained by workman directly against third party. *Thomas v. Otis Elevator Co.*, 103 Neb. 401, 172 N.W. 53 (1919).

Employee has right to sue third party, though he has settled with employer for compensation, but must make employer a party. *Muncaster v. Graham Ice Cream Co.*, 103 Neb. 379, 172 N.W. 52 (1919).

4. Subrogation

An employer's right to a future credit against an employee's recovery in an action related to a workers' compensation claim does not depend upon who brought the action which led to the employee's recovery or who happens to "recover" first. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The beneficent purposes of the Nebraska Workers' Compensation Act do not require narrow interpretation of an employer's statutory subrogation rights; the act's beneficent purposes are to provide an injured worker with prompt relief from the adverse economic effects caused by a work-related injury or occupational disease, and concern the employee's ability to promptly obtain workers' compensation benefits, not the employee's ability to additionally retain recovery against negligent third parties in tort actions. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The policies behind the Nebraska Workers' Compensation Act favor a liberal construction in favor of the employer's statutory right to subrogate against culpable third parties; workers' compensation acts generally seek to balance the rights of injured workers against the costs to the businesses that provide employment, and in order to reach this balance, most acts liberally allow employers to shift liability onto third parties whenever possible. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

The workers' compensation subrogation statute was not intended to draw a distinction which would grant the right to a future credit in recovery from actions brought by the employer, but deny that right in actions brought by the employee; such a distinction would be arbitrary insofar as it would depend on who first brought suit, and insofar as the timing of the suit would change the amount of recovery. *Bacon v. DBI/SALA*, 284 Neb. 579, 822 N.W.2d 14 (2012).

This section grants an employer who has paid workers' compensation benefits to an employee injured as a result of the actions of a third party a subrogation interest against payments made by the third party. *Burns v. Nielsen*, 273 Neb. 724, 732 N.W.2d 640 (2007).

When an employer, rather than taking advantage of its opportunity to have the settlement set aside, seeks to share in the settlement proceeds under this section, the employer is obligated to pay a reasonable portion of the employee's attorney fees under this section, and any defect in the notice provided to the employer is waived. *Turney v. Werner Enters., Inc.*, 260 Neb. 440, 618 N.W.2d 437 (2000).

An amendment to this section allowing an equitable distribution between an injured employee and the employer or insurer of a settlement from a third-party is substantive rather than procedural in nature; thus, the statute as it was in effect at the time of the employee's injury controls, and the employee is not entitled to an equitable distribution of the settlement. *Jackson v. Branick Indus., Inc.*, 254 Neb. 950, 581 N.W.2d 53 (1998).

Ordinarily, one who creates a fund which benefits a workers' compensation subrogee is entitled to reimbursement for that portion of a reasonable attorney fee attributable to the benefit conferred; however, a workers' compensation subrogee is not liable for any portion of a fee exacted by an attorney who, because of a conflict of interest, abandoned protection of the subrogee's rights. *Lawson v. Smith*, 241 Neb. 639, 489 N.W.2d 566 (1992).

The right of an employer to subrogation for amounts paid to the injured employee as workmen's compensation payments is well established in Nebraska statutory law. *Turner v. Metro Area Transit*, 220 Neb. 189, 368 N.W.2d 809 (1985).

Ordinarily a division of attorneys' fees is not required where the subrogation interest of the employer or its insurance carrier is fully and adequately represented by its own counsel and where the services of the employee's attorney were not relied upon to effect the subrogation recovery. *Schulz v. General Wholesale Coop. Co., Inc.*, 195 Neb. 410, 238 N.W.2d 463 (1976).

Subrogated interest of employer for computation and allocation of fees and expenses is measured by the workmen's compensation liability relieved or discharged by recovery against third party. *Gillotte v. Omaha Public Power Dist.*, 189 Neb. 444, 203 N.W.2d 163 (1973).

This section requires the joinder of an employer for purposes of subrogation and reimbursement. *Rogers v. Western Electric Co.*, 179 Neb. 359, 138 N.W.2d 423 (1965).

Joinder of employer by employee in suit against third party is required for purpose of subrogation and reimbursement. *American Province Real Estate Corp. v. Metropolitan Utilities Dist.*, 178 Neb. 348, 133 N.W.2d 466 (1965).

Employer was made party defendant in action by employee against third party because of right of subrogation. *Singles v. Union P. R.R. Co.*, 174 Neb. 816, 119 N.W.2d 680 (1963).

Compensation carrier, who becomes obligated for compensation payments, may seek reimbursement. *Fisher v. Chicago, B. & Q. R.R.*, 171 Neb. 804, 107 N.W.2d 740 (1961).

Subcontractor made party defendant for purpose of subrogation. *Rumsey v. Schollman Bros. Co.*, 156 Neb. 251, 55 N.W.2d 668 (1952).

This section is for the benefit of the employer so he may recover from third person. *Danner v. Walters*, 154 Neb. 506, 48 N.W.2d 635 (1951).

Where a party made a defendant for sole purpose of protecting his subrogation rights adopts and seeks to maintain the position of a plaintiff, a judgment for costs may be rendered against him. *Rehn v. Bingaman*, 152 Neb. 171, 40 N.W.2d 673 (1950).

Characteristics of statutory subrogation and equitable subrogation are the same. *Burks v. Packer*, 143 Neb. 373, 9 N.W.2d 471 (1943).

Employer was made party defendant to protect subrogation rights. *Jones v. Rossbach Coal Co.*, 130 Neb. 302, 264 N.W. 877 (1936); *Erwin v. Watson Bros. Transfer Co.*, 129 Neb. 64, 260 N.W. 565 (1935); *McDonnell v. Wasenmiller*, 74 F.2d 320 (8th Cir. 1934).

Measure of employer's right of subrogation hereunder is reimbursement from third person whose negligence caused employee's death, for full amount of compensation paid by employer to employee's dependent, together with the expenses thereof. *Goeres v. Goeres*, 124 Neb. 720, 248 N.W. 75 (1933).

Employer has statutory right of subrogation to extent of amounts properly paid under workmen's compensation law, plus expenses of recovering such damages from third person. *Bronder v. Otis Elevator Co.*, 121 Neb. 581, 237 N.W. 671 (1931).

Employer must be joined as defendant by virtue of right of subrogation. *Vandervert v. Robey*, 118 Neb. 395, 225 N.W. 36 (1929).

Subrogation hereunder is not barred by employer's concurrent negligence. *Graham v. City of Lincoln*, 106 Neb. 305, 183 N.W. 569 (1921).

If employee settles with third person, by whose negligence he was injured, employer is entitled to have amount applied on compensation, and notwithstanding settlement, employer has right to recover against negligent third party to extent of compensation awarded. *Hugh Murphy Const. Co. v. Serck*, 104 Neb. 398, 177 N.W. 747 (1920).

Employer or carrier does not have subrogation rights against the independent contractual rights which the employee might have against an insurance company. *Booth v. Seaboard Fire & Marine Ins. Co.*, 285 F.Supp. 920 (D. Neb. 1968), rev'd on other grounds, 431 F.2d 212 (8th Cir. 1970).

Employer was made party to determine subrogation rights. *Solomon Dehydrating Co. v. Guyton*, 294 F.2d 439 (8th Cir. 1961).

The fact that employer's negligence concurred with negligence of third person does not bar employer's right to subrogation. *Otis Elevator Co. v. Miller & Paine*, 240 F. 376 (8th Cir. 1917).

5. Choice of law

An employer's or insurer's subrogation interest in an injured employee's recovery from a third-party tort-feasor is determined by the law of the state in which the employee obtained workers' compensation benefits. *Turney v. Werner Enters., Inc.*, 260 Neb. 440, 618 N.W.2d 437 (2000).

The Workers' Compensation Court lacks jurisdiction to resolve disputes between employers and employees concerning the management of suits against third parties brought in courts of general jurisdiction or the division of funds obtained from a suit against a third party in a court of general jurisdiction. Because the existence of federal jurisdiction is a matter of federal law rather than state law, this section cannot, by itself, confer jurisdiction on federal courts to resolve subrogation disputes between employers and employees. The term "district court", as it is used in this section, does not exclusively mean federal district courts which have been conferred with jurisdiction by some federal statute; rather, it includes the district courts of the State of Nebraska as well. *Miller v. M.F.S. York/Stormor*, 257 Neb. 100, 595 N.W.2d 878 (1999).

This section does not take away or abridge the right of removal to federal court if that right otherwise exists. *State v. Northwestern Engineering Co.*, 69 F.Supp. 347 (D. Neb. 1946).

6. Notice provisions

A reading of this section makes it quite clear that strict compliance with the written, certified, or registered mail notice provision was not intended to be mandatory and jurisdictional, and such notice may be waived in writing or may be implied from unequivocal conduct. The employer, through its "unequivocal conduct" of seeking to share in the settlement proceeds, has ratified the employee's settlement with the tort-feasor and thereby waived the objections it might have had to such settlement based on a lack of notice under this section. *Combined Insurance v. Shurter*, 258 Neb. 958, 607 N.W.2d 492 (2000).

Substantial compliance with the notice requirement of this section is sufficient, and the requirement is met when the other party receives actual notice of a third-party claim and an opportunity to join in its prosecution. Where subrogated employer did not receive notice of certain discovery proceedings, but did have actual knowledge of the lawsuit in which the third-party claim was asserted, notice requirement of statute deemed satisfied. The notice required by this section may be waived in writing, or waiver may be implied from unequivocal conduct. The extent of a subrogated employer's participation in third-party litigation initiated by an injured employee is the critical factor in determining whether the employer has joined the action within the meaning of this section. Subrogated employer failed to join in prosecution of injured employee's third-party lawsuit where employer did nothing more than file an answer and respond to two sets of interrogatories. *Austin v. Scharp*, 258 Neb. 410, 604 N.W.2d 807 (1999).

The purpose of the 1963 amendment to this section would allow the attorney fees to be prorated and one party must give to the other party notice of filing of suit. *Turner v. Metro Area Transit*, 220 Neb. 189, 368 N.W.2d 809 (1985).

Substantial rather than literal compliance with notice provisions of this section is sufficient and strict compliance is not jurisdictional. *Versch v. Tichota*, 192 Neb. 251, 220 N.W.2d 8 (1974).

Notice to workmen's compensation carrier of suit against third party is immaterial to proration of fees and expenses where carrier is made party and attorneys for carrier carried their share of trial load, and it is desirable there should be an agreement for apportionment. *Kitchin v. Burlington Northern, Inc.*, 382 F.Supp. 42 (D. Neb. 1974).

7. Miscellaneous

This section and sections 48-118.01 through 48-118.04 should be read as a whole. In re *Estate of Evertson*, 295 Neb. 301, 889 N.W.2d 73 (2016).

Where an employer refuses to make lump-sum periodic lifetime workmen's compensation benefits due an employee or dependents, and where a recovery is made against a third party, the obligation of the employer to continue to make lifetime payments is not extinguished but merely suspended for the period of time the employer's share of the recovery satisfies the continuing obligation due the employee. In calculating the fees and expenses of both an employee and an employer, in connection with the recovery of damages from a third party, where a lump-sum agreement is not reached, the fees and expenses are to be deducted immediately from the recovery, and the employer's share of such fees and expenses is to be repaid weekly by the employer to the employee over the period of time benefit payments are due to the employee. *Nekuda v. Waspi Trucking, Inc.*, 222 Neb. 806, 388 N.W.2d 438 (1986).

Under this section, where an action is filed before a particular court and prosecuted to a final conclusion, whether by settlement or judgment, that court alone has jurisdiction to resolve any controversy relating to division of fees and expenses. *Moyer v. Douglas & Lomason Co.*, 212 Neb. 680, 325 N.W.2d 648 (1982).

Workmen's Compensation Act bars action by third party tort-feasor against employer for contribution or indemnity based on claim arising from the injury. *Vangreen v. Interstate Machinery & Supply Co.*, 197 Neb. 29, 246 N.W.2d 652 (1976).

An employer can bring an action directly against a third party tort-feasor for injuries suffered by an employee, but only a personal representative of a deceased employee can bring an action for wrongful death, which action must be filed within two years after death. *United Materials, Inc. v. Landreth*, 196 Neb. 525, 244 N.W.2d 164 (1976).

Truck rental agreement, as modified, did not create relationship of employer and employee. *United States F. & G. Co. v. Missouri Valley Constr. Co.*, 179 Neb. 565, 139 N.W.2d 222 (1966).

Civil liability of third person for causing death of employee is not changed by Workmen's Compensation Act. *Luckey v. Union P. R. R. Co.*, 117 Neb. 85, 219 N.W. 802 (1928).

Act recognizes common-law liability of third persons for negligent injury to employee. *Tralle v. Hartman Furniture & Carpet Co.*, 116 Neb. 418, 217 N.W. 952 (1928).

A voluntary payment made by a workers' compensation insurer after the statute of limitations has run does not remove the bar of the statute of limitations. In workers' compensation cases, an advance payment by an employer does not remove the bar of a statute of limitations which had already run at the time of the payment from a third-party lawsuit. The statute of limitations bars further suit against an employer if 2 years pass without a payment of workers' compensation from the employer, including by way of an advance payment from a third-party suit against a tort-feasor before the 2-year statute runs, by direct payment by the employer or its insurer, or by a payment caused to be made by the employer. *Thomas v. Lincoln Public Schools*, 9 Neb. App. 965, 622 N.W.2d 705 (2001).

An injured employee may use the common fund doctrine to shift an appropriate share of the cost of workers' compensation litigation to a health care insurer who directly and substantially benefits by the litigation through reimbursement. *Kaiman v. Mercy Midlands Medical & Dental Plan*, 1 Neb. App. 148, 491 N.W.2d 356 (1992).

Under facts in this settled case, costs were prorated between employee and intervening compensation carrier in same proportion they shared in benefits; each to pay own attorney's fees.

Carter v. Par-Kan Construction Co., 348 F.Supp. 1295 (D. Neb. 1972).

Absent express contract of indemnity between seller of crane and purchaser, the Nebraska Workmen's Compensation Act

insulated purchaser from contribution or indemnity in favor of seller in action by purchaser's employee for injuries sustained while dismantling crane. Petznick v. Clark Equipment Co., 333 F.Supp. 913 (D. Neb. 1971).

48-118.01 Third-party claims; procedure; attorney's fees.

Before making a claim or bringing suit against a third person by the employee or his or her personal representative or by the employer or his or her workers' compensation insurer, thirty days' notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel. If a party entitled to notice cannot be found, the clerk of the Nebraska Workers' Compensation Court shall become the agent of such party for giving notice as required in this section. The notice when given to the clerk of the compensation court shall include an affidavit setting forth the facts, including the steps taken to locate such party.

After the expiration of thirty days, for failure to receive notice or other good cause shown, the district court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the district court in which it could be brought shall allow either party to commence such action. Each party shall have an equal voice in the claim and the prosecution of such suit, and any dispute arising shall be passed upon by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

If the employee or his or her personal representative or the employer or his or her workers' compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

Source: Laws 2005, LB 13, § 23.

In this section, the use of the term "the court" refers to the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section requires that a subrogation claim against a third-party tort-feasor for workers' compensation benefits paid to a claimant must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.02 Third-party claims; expenses and attorney's fees; apportionment.

If either party after receiving notice under section 48-118.01 fails, by and through his or her attorney, to join in the third-party claim or suit, such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with section 48-118.04. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amounts payable to the employer or his or her workers' compensation insurer under the right of subrogation established in section 48-118 and (2) to the amount in excess of such amount payable to the employer or his or her workers' compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery.

Source: Laws 2005, LB 13, § 24.

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

When an employer has a subrogation interest in the recovery in a worker's third-party claim, the party bringing the claim or

prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney fees. Sterner v. American Fam. Ins. Co., 19 Neb. App. 339, 805 N.W.2d 696 (2011).

48-118.03 Third-party claims; failure to give notice; effect.

If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party.

Source: Laws 2005, LB 13, § 25.

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.04 Third-party claims; settlement; requirements.

(1) A settlement of a third-party claim under the Nebraska Workers' Compensation Act is void unless:

(a) Such settlement is agreed upon in writing by the employee or his or her personal representative and the workers' compensation insurer of the employer, if there is one, and if there is no insurer, then by the employer; or

(b) In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment.

(2) If the employee or his or her personal representative or the employer or his or her workers' compensation insurer do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court, upon application, shall order a fair and equitable distribution of the proceeds of any judgment or settlement.

Source: Laws 2005, LB 13, § 26.

- 1. Fair and equitable distribution
- 2. Miscellaneous

1. Fair and equitable distribution

A distribution of the proceeds of a judgment or settlement under subsection (2) of this section must be fair and equitable to both the employee and the employer or its insurer. Kroemer v. Omaha Track Equip., 296 Neb. 972, 898 N.W.2d 661 (2017).

The phrase "fair and equitable distribution," as used in this section, was not intended to permit the subrogation interest of an employer or workers' compensation insurer to be subject to equitable defenses. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

The purpose of this section is to prevent a fair and reasonable settlement between an employee and third-party tort-feasor from being delayed because the parties cannot agree on how the proposed settlement should be distributed. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

This section does not adopt a "made whole" doctrine, nor does it adopt any other specific rule for making a fair and equitable distribution, but instead leaves the distribution to the court's discretion. Turco v. Schuning, 271 Neb. 770, 716 N.W.2d 415 (2006).

Statutory subrogation under this section requires a fair and equitable distribution to be determined by the trial court under

the facts of each case. Sterner v. American Fam. Ins. Co., 19 Neb. App. 339, 805 N.W.2d 696 (2011).

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

2. Miscellaneous

Although the trial court did not abuse its discretion in approving an injured employee's settlement of his third-party suit for \$150,000, the court's allocation of zero to an employer who had a subrogation interest exceeding \$200,000 was untenable. Kroemer v. Omaha Track Equip., 296 Neb. 972, 898 N.W.2d 661 (2017).

Because this section should be read along with sections 48-118 through 48-118.03, the use of the term "the court" in this section refers to the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

District courts have exclusive subject matter jurisdiction over proceedings for the fair and equitable distribution of settlement proceeds from third-party tort-feasors subject to subrogation in workers' compensation cases. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section does not authorize the district court to punish an employer beyond the penalties expressly prescribed by the workers' compensation statutes. *Burns v. Nielsen*, 273 Neb. 724, 732 N.W.2d 640 (2007).

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

48-118.05 Third-party claims; Workers' Compensation Trust Fund; subrogation rights.

In any case in which an injured employee is entitled to benefits from the Workers' Compensation Trust Fund for injuries occurring before December 1, 1997, as provided in section 48-128 and recovery is had against the third party liable to the employee for the injury, the Workers' Compensation Trust Fund shall be subrogated to the rights of the employee against such third party to the extent of the benefits due to him or her or which shall become due to him or her from such fund, subject to the rights of the employer and his or her workers' compensation insurer.

Source: Laws 2005, LB 13, § 27.

(c) SCHEDULE OF COMPENSATION

48-119 Compensation; from what date computed.

No compensation shall be allowed for the first seven calendar days of disability, except as provided in section 48-120, but if disability extends beyond the period of seven calendar days, compensation shall begin on the eighth calendar day of disability, except that if such disability continues for six weeks or longer, compensation shall be computed from the date disability began. For purposes of this section, a partial day of disability shall be deemed a calendar day of disability.

Source: Laws 1913, c. 198, § 19, p. 585; R.S.1913, § 3660; Laws 1917, c. 85, § 5, p. 202; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3042; C.S.1929, § 48-119; R.S.1943, § 48-119; Laws 1999, LB 216, § 2.

For scheduled disabilities caused by repetitive trauma, the date disability begins is the same as the date of injury for whole body impairments caused by repetitive trauma. That date is when the employee discontinues work and seeks medical treatment, despite being paid wages while he continued to work. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

Compensation is to be computed from the date of the injury. *Hobza v. Seedorff Masonry, Inc.*, 259 Neb. 671, 611 N.W.2d 828 (2000).

After injury has continued for six weeks, compensation should be computed from date of injury. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

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, corporation, 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 compensa-

tion 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' compensation 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 compensability 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.

- 1. Liability
- 2. Travel expense
- 3. Physician's fee
- 4. Miscellaneous

1. Liability

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, the Workers' Compensation Court did not err in denying compensation for the surgery under an award of future medical treatment. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

If an employer has sufficient knowledge of an injury to an employee to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the employee may make suitable independent arrangements at the employer's expense. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

If compensability is denied by the employer, the employee has the right to select a physician and the employer is liable for medical services subsequently found to be compensable. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Once it has been determined that the need for future medical care is probable, the employer is liable for any future care shown to be reasonably necessary under this section. *Sellers v. Reefer Systems*, 283 Neb. 760, 811 N.W.2d 293 (2012).

An employee's injury which occurs en route to a required medical appointment that is related to a compensable injury is also compensable, as long as the chosen route is reasonable and practical. *Straub v. City of Scottsbluff*, 280 Neb. 163, 784 N.W.2d 886 (2010).

Before an order for future medical benefits may be entered pursuant to this section, there should be a stipulation of the parties or evidence in the record to support a determination that future medical treatment will be reasonably necessary to relieve the injured worker from the effects of the work-related injury or

occupational disease. *Foote v. O'Neill Packing*, 262 Neb. 467, 632 N.W.2d 313 (2001).

The history of this section clearly manifests a legislative intent to make medical benefits available to a disabled worker without regard to any time limitation measured from the last date of payment, when an award is entered, so long as further medical treatment is reasonably necessary to relieve the worker from the effects of the work-related injury or occupational disease. *Foote v. O'Neill Packing*, 262 Neb. 467, 632 N.W.2d 313 (2001).

The Workers' Compensation Court may allow an employee to recover the reasonable value of necessary home nursing care furnished by the employee's spouse. *Kidd v. Winchell's Donut House*, 237 Neb. 176, 465 N.W.2d 442 (1991).

While a disabled employee may not be required to undergo surgery, an unreasonable refusal to submit to surgery, taking into account the risk involved to the employee, the nature of the surgery, and the likelihood of improving the condition, may result in the forfeiture or reduction of compensation benefits, as may be appropriate. *Yarns v. Leon Plastics, Inc.*, 237 Neb. 132, 464 N.W.2d 801 (1991).

The cost of a penile implant is a compensable medical procedure under this section. *Canas v. Maryland Cas. Co.*, 236 Neb. 164, 459 N.W.2d 533 (1990).

Generally, pursuant to this section, an employee may be reimbursed for nursing care in the employee's home or at a nursing home, when such care is necessitated by a work-related injury, so long as the cost of the care is fair and reasonable. *Bituminous Casualty Corp. v. Deyle*, 234 Neb. 537, 451 N.W.2d 910 (1990).

An employer is liable only for those reasonable medical expenses incurred as a result of a compensable accident. Expenses not shown by the evidence to have been incurred as a result of a compensable accident are not allowable as charges against the

employer. *Hare v. Watts Trucking Service*, 220 Neb. 403, 370 N.W.2d 143 (1985).

Even though there is no present prospect for improvement of a condition of total and permanent disability or of further rehabilitation, the employer continues to be responsible under this section for further nursing care and therapy. *S. & S. LP Gas Co. v. Ramsey*, 201 Neb. 751, 272 N.W.2d 47 (1978).

An employer is liable to an injured employee for reasonable medical and hospital services and medicines which are necessary to relieve or cure injury suffered by the employee. *Spiker v. John Day Co.*, 201 Neb. 503, 270 N.W.2d 300 (1978).

An injured employee may recover the reasonable value of necessary nursing care furnished to him by his wife while he was cared for at home. *Spiker v. John Day Co.*, 201 Neb. 503, 270 N.W.2d 300 (1978); overruling *Claus v. DeVere*, 120 Neb. 812, 235 N.W. 450 (1931).

The liability of an employer to an injured employee for reasonable medical and hospital services and medicine which are necessary as a result of injury, is not limited to only those situations in which the employee may be cured or his disability reduced by further treatment. *Spiker v. John Day Co.*, 201 Neb. 503, 270 N.W.2d 300 (1978).

When undisputed evidence shows plaintiff will require medicines and medical and hospital services in the future as a result of his injuries they shall, subject to approval by the Workmen's Compensation Court, be supplied by defendant. *Shotwell v. Industrial Builders, Inc.*, 187 Neb. 320, 190 N.W.2d 624 (1971).

In absence of showing of unreasonableness, hospital and nurse expense incurred will be allowed. *Gourley v. City of Grand Island*, 168 Neb. 538, 96 N.W.2d 309 (1959).

Where further medical services would not improve condition, liability for same ceases. *Peek v. Ayres Auto Supply*, 155 Neb. 233, 51 N.W.2d 387 (1952).

Medical services necessary in treating injury to eye were recoverable. *Gruber v. Stickelman*, 149 Neb. 627, 31 N.W.2d 753 (1948).

Where evidence shows that further medical, hospital, and surgical services would not definitely improve condition of an injured employee, employer's liability to furnish such services ceases. *Paulson v. Martin-Nebraska Co.*, 147 Neb. 1012, 26 N.W.2d 11 (1947).

Employer is liable for reasonable medical and hospital services when award provides for further medical, surgical, and hospital care. *Gilmore v. State*, 146 Neb. 647, 20 N.W.2d 918 (1945).

Employer is liable for reasonable hospital and medical services and medicines, when needed, and approved by compensation commissioner. *Summers v. Railway Express Agency*, 134 Neb. 237, 278 N.W. 476 (1938).

Where evidence shows that further medical, surgical, and hospital services would not improve condition of injured employee, employer's liability for such services ceases. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

Employer providing medical attention during three weeks subsequent to injury is not liable for medical expenses after blood poisoning developed. *Epsten v. Hancock-Epsten Co.*, 101 Neb. 442, 163 N.W. 767 (1917).

The general rule under this section is that, should a court determine a medical treatment for a condition unrelated to a work-related injury is medically reasonable and necessary to treat the underlying work-related injury, the medical treatment is required by the nature of the injury and is compensable. *Carr v. Ganz*, 26 Neb. App. 14, 916 N.W.2d 437 (2018).

Under subsection (1)(a) of this section, an employer is liable for all reasonable medical, surgical, and hospital services 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. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

Before an order for future medical benefits may be entered pursuant to subsection (1)(a) of this section, there must be

explicit evidence that future medical treatment is reasonably necessary to relieve the injured worker from the effects of the work-related injury. *Adams v. Cargill Meat Solutions*, 17 Neb. App. 708, 774 N.W.2d 761 (2009).

The trial judge did not err in ordering the employer to pay for medication, because the judge's determination that the medication was necessary to treat both the work-related side effects of pain medication and the unrelated condition of sleep apnea was not clearly wrong. *Zitterkopf v. Aulick Indus.*, 16 Neb. App. 829, 753 N.W.2d 370 (2008).

Medical expenses incurred before the date of an employee's accident in a repetitive trauma case may be compensable if they are reasonably necessary and related to the compensable injury. *Tomlin v. Densberger Drywall*, 14 Neb. App. 288, 706 N.W.2d 595 (2005).

Making a home handicapped-accessible was an "appliance" and "supply" for which the employer of injured employee was liable. *Koterzina v. Copple Chevrolet*, 1 Neb. App. 1000, 510 N.W.2d 467 (1993).

2. Travel expense

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

An injured employee was not entitled to payment for travel expenses to Massachusetts where the trial court properly found that a physician was available in the local community or in a closer community than Massachusetts. *Savage v. Hensel Phelps Constr. Co.*, 208 Neb. 676, 305 N.W.2d 375 (1981).

Travel expenses to obtain medical treatment may be allowed. *Pavel v. Hughes Brothers*, 167 Neb. 727, 94 N.W.2d 492 (1959).

Injured workman was entitled to recover travel expense incurred to obtain medical treatment. *Pittenger v. Safeway Stores, Inc.*, 166 Neb. 858, 91 N.W.2d 31 (1958).

Employer may be held liable for medical and hospital services, including cost of travel reasonably necessary for obtaining such services. *Newberry v. Youngs*, 163 Neb. 397, 80 N.W.2d 165 (1956).

3. Physician's fee

Workmen's compensation court may allow medical expenses in accordance with medical fee schedule approved by the court. *Schoenrock v. School Dist. of Nebraska City*, 179 Neb. 621, 139 N.W.2d 547 (1966).

Employer is liable for reasonable medical and hospital expense and medicines as and when needed. *Brewer v. Hilberg*, 173 Neb. 863, 115 N.W.2d 437 (1962).

Physician is entitled to fee for making examination of employee after hearing before compensation commissioner and before trial in district court, to determine if surgical operation on employee as demanded by employer would be reasonably safe and beneficial. *Solomon v. A. W. Farney, Inc.*, 130 Neb. 484, 265 N.W. 724 (1936).

Family physician, chosen by employee to aid operating surgeon selected by employer, may recover for such services and post-operative attention to patient from the employer. *Wingate v. Evans Model Laundry*, 123 Neb. 844, 244 N.W. 635 (1932).

4. Miscellaneous

The term "payor" as used in subsection (8) of this section is limited to third-party payors, such as health insurance carriers. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

Upon receipt of payment from an employer, a supplier or provider of services becomes obligated to reimburse an employee any amounts he or she has previously paid. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

An employer is not responsible for medical services furnished or ordered by any physician or other person selected by an

injured employee in disregard of subdivision (2)(a) of this section. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Under subdivision (2)(a) of this section, an 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 the injury. The employer shall notify the employee following an injury of such right of selection in a form and manner within the timeframe established by the compensation court. *Clark v. Alegent Health Neb.*, 285 Neb. 60, 825 N.W.2d 195 (2013).

Under subsection (b) of this section, the fee schedule is applicable to payments made by third-party payors. *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 803 N.W.2d 489 (2011).

This section, while not affording the Workers' Compensation Court with jurisdiction to resolve every disagreement that may arise with respect to the rights and obligations of a third-party insurer, clearly provides that the Workers' Compensation Court shall order an employer to directly reimburse medical care providers and medical insurers for the reasonable medical, surgical, and hospital services supplied to a workers' compensation claimant pursuant to this section. *Kimminau v. Uribe Refuse Serv.*, 270 Neb. 682, 707 N.W.2d 229 (2005).

This section does not require the court to have a physician examine plaintiff when medical evidence on cause is lacking. The statute applies only to issues of medical fact or opinion in cases where liability has been established and issues arise over such things as refusal or necessity of medical treatment. The statute grants the court discretionary power. *Coco v. Austin Co.*, 212 Neb. 95, 321 N.W.2d 448 (1982).

If psychiatric treatment is prescribed, refusal of the treatment may be deemed unreasonable in view of the absence of any physical suffering in the treatment. *Davis v. Western Electric*, 210 Neb. 771, 317 N.W.2d 68 (1982).

The Nebraska Workmen's Compensation Court has continuing authority to determine the necessity, character, and sufficiency of medical services furnished or to be furnished and to order a change therein when it deems such change is desirable

or necessary. *S. & S. LP Gas Co. v. Ramsey*, 201 Neb. 751, 272 N.W.2d 47 (1978).

Ordinarily, an employee's right to recover the cost of medical and hospital services and medicines depends upon his having paid for services or incurred a liability to pay for them. *Spiker v. John Day Co.*, 201 Neb. 503, 270 N.W.2d 300 (1978).

Exclusive original jurisdiction to determine claims under workmen's compensation law is in compensation commissioner. *Zurich General Accident & Liability Ins. Co. v. Walker*, 128 Neb. 327, 258 N.W. 550 (1935).

Plaintiff in action against noninsuring employer for personal injuries has not waived right of action, or brought himself within Workmen's Compensation Act, by accepting payment of hospital bill. *Brown v. York Water Co.*, 104 Neb. 516, 177 N.W. 833 (1920).

Employer is not liable for medical services procured by employee, where latter unreasonably refuses services of physician procured by employer. *Radil v. Morris & Co.*, 103 Neb. 84, 170 N.W. 363 (1919).

The meaning of subsection (4) of this section is plain and unambiguous. When an injured worker is seeking compensation for an injury from his employer and the employer seeks relevant information from the injured worker's treating physician regarding that injury, that information is not privileged. *Scott v. Drivers Mgmt., Inc.*, 14 Neb. App. 630, 714 N.W.2d 23 (2006).

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

A health care insurer cannot be a party to the underlying workers' compensation case which, if successful, results in the reimbursement of the health care insurer, nor can it be later joined after a successful result. *Kaiman v. Mercy Midlands Medical & Dental Plan*, 1 Neb. App. 148, 491 N.W.2d 356 (1992).

48-120.01 Terms, defined.

As used in section 48-120, unless the context otherwise requires:

- (1) Plastic surgery shall mean that branch of surgery concerned with the repair or restoration of lost, injured, or deformed body parts chiefly by transfer of tissue; and
- (2) Reconstructive surgery shall mean surgery which restores or tends to restore an injured or deformed structure.

Source: Laws 1978, LB 529, § 1.

48-120.02 Managed care plan; certification; application; requirements; conditions; dispute resolution procedure; required; independent medical examiner; compensation court; powers and duties; Attorney General; duties.

(1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be adopted and promulgated by the compensation court. Each application for

certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court prescribes unless earlier revoked or suspended pursuant to subsection (4) or (5) of this section. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical, and hospital services under the managed care plan, together with a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose a physician to provide medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change the physician initially selected to provide medical, surgical, and hospital services under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, certifications, or registrations of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent medical examiner pursuant to section 48-134.01. No petition may be filed with the compensation court pursuant to section 48-173 solely on the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify a managed care plan or a three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section. A three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan if the panel finds that the plan fails to meet the requirements of this section or that service under the plan is not being provided in accordance with the terms of a certified plan.

(6) 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 representatives of a certified managed care plan to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke or suspend certification of the plan pursuant to subsection (4) or (5) of this section. 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 managed care plan unfairly restricts direct access within the plan, that the plan fails to meet the requirements of this section, or that service under the plan is not being provided in accordance with the terms of a certified plan. The presiding judge shall rule on a motion of the Attorney General pursuant to this subsection 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 suspension or revocation pursuant to subsection (4) or (5) of this section shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas.

(7) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1993, LB 757, § 3; Laws 1998, LB 1010, § 3; Laws 1999, LB 216, § 4; Laws 2000, LB 1221, § 3; Laws 2005, LB 13, § 3.

48-120.03 Generic drugs; use.

Any person or entity that dispenses medicines and medical supplies, as required by section 48-120, shall dispense the generic drug equivalent unless:

- (1) A generic drug equivalent is unavailable; or
- (2) The prescribing physician specifically provides in writing that a nongeneric drug must be dispensed.

Source: Laws 2005, LB 13, § 28.

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

ed 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.

48-121 Compensation; schedule; total, partial, and temporary disability; injury to specific parts of the body; amounts and duration of payments.

The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be 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 he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease;

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01. This compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability;

(3) For disability resulting from permanent injury of the classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth

finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

If, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or

illness, do not adequately compensate the employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under subdivision (1) or (2) of this section, and in such a case the employee shall not be entitled to compensation under this subdivision.

If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be 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 the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation;

(4) For disability resulting from permanent disability, 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; and

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Source: Laws 1913, c. 198, § 21, p. 586; R.S.1913, § 3662; Laws 1917, c. 85, § 7, p. 202; Laws 1919, c. 91, § 2, p. 228; Laws 1921, c. 122, § 1, p. 521; C.S.1922, § 3044; C.S.1929, § 48-121; Laws 1935, c. 57, § 41, p. 210; C.S.Supp.,1941, § 48-121; R.S.1943, § 48-121; Laws 1945, c. 112, § 1, p. 357; Laws 1949, c. 160, § 1, p. 403; Laws 1951, c. 152, § 1, p. 617; Laws 1953, c. 162, § 1, p. 506; Laws 1955, c. 186, § 1, p. 527; Laws 1957, c. 203, § 1, p. 710; Laws 1957, c. 204, § 1, p. 716; Laws 1959, c. 223, § 1, p. 784; Laws 1963, c. 284, § 1, p. 847; Laws 1963, c. 285, § 1, p. 854; Laws 1965, c. 279, § 1, p. 800; Laws 1967, c. 288, § 1, p. 783; Laws 1969, c. 388, § 3, p. 1360; Laws 1969, c. 393, § 1, p. 1378; Laws 1971, LB 320, § 1; Laws 1973, LB 193, § 1; Laws 1974, LB 710, § 1; Laws 1974, LB 807, § 1; Laws 1974, LB 808, § 1; Laws 1975, LB 198, § 1; Laws 1977, LB 275, § 1; Laws 1978, LB 446, § 1; Laws 1979, LB 114, § 1; Laws 1979, LB 358, § 1; Laws 1983, LB 158, § 1; Laws 1985, LB 608, § 1; Laws 1993, LB 757, § 4; Laws 1999, LB 216, § 5; Laws 2007, LB588, § 4.

1. Permanent total disability
2. Temporary total disability
3. Partial disability
4. Permanent injury, specific classes
5. Disability generally
6. Whole body impairment

- 7. Vocational rehabilitation
- 8. Earning power
- 9. Labor market or hub community
- 10. Average weekly wage
- 11. Miscellaneous

1. Permanent total disability

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

In a workers' compensation case, total disability does not mean a state of absolute helplessness. It means that because of an injury, (1) a worker cannot earn wages in the same kind of work, or work of a similar nature, that he or she was trained for or accustomed to perform or (2) the worker cannot earn wages for work for any other kind of work which a person of his or her mentality and attainments could do. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

Under the "odd-lot doctrine," total disability may be found in the case of workers who, while not altogether incapacitated for work, are so handicapped that they will not be employed regularly in any well-known branch of the labor market. The essence of the test is the probable dependability with which claimant can sell his services in a competitive labor market, undistorted by such factors as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

Total disability in the context of the workers' compensation law does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or work of a similar nature, that he or she was trained for or accustomed to perform, or any other kind of work which a person of his or her mentality and attainments could do. *Mata v. Western Valley Packing*, 236 Neb. 584, 462 N.W.2d 869 (1990).

An employee's return to work does not in every case terminate an employee's total disability from a work-related injury. Pursuant to subsections (1) and (2) of this section, an employee's disability is determined by the employee's diminution of employability or impairment of earning power or earning capacity, and is not necessarily determined by a physician's evaluation and assessment of the employee's loss of bodily function. *Heiliger v. Walters & Heiliger Electric, Inc.*, 236 Neb. 459, 461 N.W.2d 565 (1990).

Total disability in the context of the workers' compensation law does not mean a state of absolute helplessness, but means disablement of an employee to earn wages in the same kind of work, or work of a similar nature, that he or she was trained for or accustomed to perform, or any other kind of work which a person of his or her mentality and attainments could do. *Luehring v. Tibbs Constr. Co.*, 235 Neb. 883, 457 N.W.2d 815 (1990).

Whether a partial loss or loss of use of two members results in total and permanent disability is to be determined in accordance with the facts. Evidence shows that plaintiff was permanently totally disabled as a matter of law. *Krijan v. Mainelli Constr. Co.*, 216 Neb. 186, 342 N.W.2d 662 (1984).

An employee may be totally disabled but still able, on occasion, to obtain trivial employment. *Craig v. American Community Stores, Inc.*, 205 Neb. 286, 287 N.W.2d 426 (1980).

An employee who has permanent total disability from separate accidents is entitled to compensation out of the Second Injury Fund even though the injuries were schedule injuries. *Camp v. Blount Bros. Corp.*, 195 Neb. 459, 238 N.W.2d 634 (1976).

A claimant who sustains the loss of use of his right hand and a permanent partial loss of use of his right leg is entitled to compensation under subdivision (1) of this section for that proportion of the compensation allowed for total disability as the extent of the loss of the use of the two members bears to the total loss of such members. *Wiekhorst v. Rural Electric Co., Inc.*, 186 Neb. 445, 183 N.W.2d 747 (1971).

An employee may be totally disabled for all practical purposes and yet be able to obtain trivial occasional employment. *Brockhaus v. L. E. Ball Constr. Co.*, 180 Neb. 737, 145 N.W.2d 341 (1966).

Injury sustained to both feet under extraordinary conditions resulted in permanent total disability. *Mead v. Missouri Valley Grain, Inc.*, 178 Neb. 553, 134 N.W.2d 243 (1965).

Award of total disability, which resulted from conversion reaction following injury to back, was sustained. *Haskett v. National Biscuit Co.*, 177 Neb. 915, 131 N.W.2d 597 (1964).

An injury to fingers only on both hands does not authorize an award for total and permanent disability. *Runyan v. Lockwood Graders, Inc.*, 176 Neb. 676, 127 N.W.2d 186 (1964).

There may be total permanent disability even though there is only a permanent partial loss of bodily function. *Nordahl v. Erickson*, 174 Neb. 204, 116 N.W.2d 275 (1962).

Workman was entitled to award for total disability from an occupational disease. *Riggs v. Gooch Milling & Elevator Co.*, 173 Neb. 70, 112 N.W.2d 531 (1961).

Total disability is defined in terms of employability and earning capacity. *Rapp v. Hale*, 170 Neb. 620, 103 N.W.2d 851 (1960).

Where employee was wholly unable to perform the duties of former employment or work of like nature, he was entitled to recover for permanent total disability. *Tilghman v. Mills*, 169 Neb. 665, 100 N.W.2d 739 (1960).

Permanent total disability may result from unusual and extraordinary condition arising from injury to specific members. *Haler v. Gering Bean Co.*, 163 Neb. 748, 81 N.W.2d 152 (1957).

Total disability can only be held to exist where workman is unable to get, hold, or do any substantial amount of remunerative work, either in his previous occupation or in any other established field of employment for which he is fitted. *Elliott v. Gooch Feed Mill Co.*, 147 Neb. 612, 24 N.W.2d 561 (1946).

Workman was totally disabled when he was unable, on account of his injury, to perform or to obtain any substantial amount of labor, either in his particular line of work or in any other for which he would be fitted except for the injury. *Elliott v. Gooch Feed Mill Co.*, 147 Neb. 309, 23 N.W.2d 262 (1946).

Total disability exists only where workman is unable to get, hold, or do any substantial amount of remunerative work. *Micek v. Omaha Steel Works*, 136 Neb. 843, 287 N.W. 645 (1939).

Where employee was totally disabled and was earning twenty-four dollars a week at time of injury, he was entitled to compensation after the first three hundred weeks and for the remainder of his life at the rate of forty-five percent of his weekly wage. *Montgomery v. Milldale Farm & Live Stock Improvement Co.*, 124 Neb. 347, 246 N.W. 734 (1933).

Where injury affected the whole nervous system in such manner as to disable claimant from doing any work, he was entitled to an award for total disability. *Nebraska Nat. Guard v. Morgan*, 112 Neb. 432, 199 N.W. 557 (1924).

Where injury wholly unfitted employee for the work he was engaged in at the time he received his injuries, an award for total disability was justified. *Troxcil v. Morris & Co.*, 107 Neb. 817, 186 N.W. 978 (1922).

2. Temporary total disability

A workers' compensation claimant who leaves a job with an employer responsible for an injury in order to pursue more desirable employment does not waive temporary total disability benefits simply because the employer responsible for the injury would have accommodated light-duty restrictions during post-surgical recovery periods necessitated by the injury. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

Under subdivision (5) of this section, an injured employee may not undertake rehabilitation on his or her own and receive temporary total disability benefits without approval from either the court or his or her former employer. *Bixenmann v. H. Kehm Constr.*, 267 Neb. 669, 676 N.W.2d 370 (2004).

Because benefits received during vocational rehabilitation under subsection (5) of this section may be "temporary total disability" benefits, a species of total disability benefits, and where such benefits are followed by "partial disability" benefits, pursuant to subsection (2) of this section, the 300-week period shall be reduced by the number of weeks during which compensation was paid for such total disability. *Sheldon-Zimbelman v. Bryan Memorial Hosp.*, 258 Neb. 568, 604 N.W.2d 396 (2000).

An employee awarded temporary total disability payments is entitled to suspension of a prior unrelated award for a permanent partial disability caused by a previous accident until the temporary total disability payments cease. *Anderson v. Omaha Pub. Sch. Dist.*, 254 Neb. 1007, 581 N.W.2d 424 (1998).

Claimant was entitled to maximum for total temporary disability. *Myszkowski v. Wilson & Co., Inc.*, 155 Neb. 714, 53 N.W.2d 203 (1952).

Award of temporary total disability and partial permanent disability was proper. *Riggins v. Lincoln Tent & Awning Co.*, 143 Neb. 893, 11 N.W.2d 810 (1943).

An employee is not prevented from receiving compensation for temporary total disability to perform the duties in which he is engaged at the time of an accident merely because he is then receiving an unrelated allowance for a permanent partial disability from a previous accident. *Hansen v. Paxton & Vierling Iron Works*, 138 Neb. 589, 293 N.W. 415 (1940).

An award of temporary partial disability is authorized, even though permanent partial disability must also be computed for loss of specific member. *Dennehy v. Lincoln Steel Works*, 136 Neb. 269, 285 N.W. 590 (1939).

Rule for determining compensation allowable for permanent partial loss of injured members, and temporary total disability, is stated. *Poast v. Omaha Merchants Exp. & Trans. Co.*, 107 Neb. 516, 186 N.W. 540 (1922).

Allowance may be made for temporary total disability in addition to allowance for permanent partial loss of use of finger. *Ulaski v. Morris & Co.*, 106 Neb. 782, 184 N.W. 946 (1921).

The 300-week limitation found in subsection (2) of this section does not apply to benefits for temporary total disability awarded under subsection (1) of this section. *Heppler v. Omaha Cable*, 16 Neb. App. 267, 743 N.W.2d 383 (2007).

3. Partial disability

Pursuant to subdivision (2) of this section, permanent partial disability benefits are measured not by loss of bodily function, but by reduction in or loss of earning power or employability. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

Worker's compensation benefits awarded under subsection (2) of this section are not measured by loss of bodily function, but by reduction in earning power or employability. An employee's disability as a basis for compensation under subsections (1) and (2) of this section is determined by the employee's diminution of employability or impairment of earning power or earning capacity and is not necessarily determined by a physician's evaluation and assessment of the employee's loss of bodily function. *Frauentorfer v. Lindsay Mfg. Co.*, 263 Neb. 237, 639 N.W.2d 125 (2002).

Compensation for permanent partial disability to the body as a whole is compensated on the basis of loss of earning capacity and employability rather than functional or medical loss. *Musil v. J.A. Baldwin Manuf. Co.*, 233 Neb. 901, 448 N.W.2d 591 (1989).

Where pain is sufficiently severe to prevent a normal function of a body member, a partial loss results within the purview of this section. *Cain v. La Grange Steel Erectors, Inc.*, 195 Neb. 272, 237 N.W.2d 640 (1976).

Workman sustained a permanent partial disability from organic heart disease and a cardiac arrest. *Arlauskas v. Western Electric Co.*, 180 Neb. 790, 145 N.W.2d 925 (1966).

Rule for computation of allowance for permanent partial disability applied. *Gourley v. City of Grand Island*, 168 Neb. 538, 96 N.W.2d 309 (1959).

Injury to back justified award for permanent partial disability. *Pittenger v. Safeway Stores, Inc.*, 166 Neb. 858, 91 N.W.2d 31 (1958).

Permanent partial disability is compensated for by award based on difference between wages received at time of injury and earning power thereafter. *Turner v. Beatrice Foods Co.*, 165 Neb. 338, 85 N.W.2d 721 (1957).

Compensation for two-member permanent partial disability is determined by first applying percentage of disability to wage rate. *Paulsen v. City of Lincoln*, 156 Neb. 872, 58 N.W.2d 336 (1953).

Rule for computation of award for temporary partial disability is stated. *Peek v. Ayres Auto Supply*, 155 Neb. 233, 51 N.W.2d 387 (1952).

Extent of permanent disability is not finally determinable until employee is restored to health insofar as the nature of his injuries will permit. *Allen v. Department of Roads & Irrigation*, 149 Neb. 837, 32 N.W.2d 740 (1948).

Where there is a permanent partial disability, employee is entitled to compensation for three hundred weeks from date of injury. *Klement v. H. P. Lau Co.*, 138 Neb. 144, 292 N.W. 381 (1940).

Where claimant has sustained loss of use of hand and loss of use of leg, he is entitled to such compensation under subdivision (1) as the extent of loss of the use of two members will bear to the total loss of use of such members. *Fallis v. Vogel*, 137 Neb. 598, 290 N.W. 461 (1940).

Where injuries are not permanent in character, an award may be made for total disability followed by partial disability. *Mutchie v. M. L. Rawlings Ice Co.*, 122 Neb. 297, 240 N.W. 267 (1932).

Method of computing permanent partial disability is by applying percentage of disability to period of compensation. *Lewis v. Allied Contractors*, 118 Neb. 605, 225 N.W. 770 (1929).

Where there is a permanent partial loss of hand and feet, compensation should be allowed under subdivision (1). *Ashton v. Blue River Power Co.*, 117 Neb. 661, 222 N.W. 42 (1928).

Where employee suffered permanent partial disability to his legs, he was entitled to recover such proportion of compensation under subdivision (1) as the extent of his loss would bear to the total loss of such members. *Schlesselman v. Trav. Ins. Co.*, 112 Neb. 332, 199 N.W. 498 (1924); *Frost v. United States Fidelity & Guaranty Co.*, 109 Neb. 161, 190 N.W. 208 (1922).

Where injury results in permanent partial loss of use of both arms, employee is entitled to recover such proportion of compensation allowed for total disability as the extent of the loss would bear to total loss of such members. *Johnson v. David Cole Creamery Co.*, 109 Neb. 707, 192 N.W. 127 (1923).

Compensation allowable for permanent partial disability is such proportion of entire loss as disability produced bears to whole. *Hall v. Germantown State Bank*, 105 Neb. 709, 181 N.W. 609 (1921).

Where there are permanent injuries to two or more fingers, allowance should be made for permanent partial loss of hand. *Updike Grain Co. v. Swanson*, 103 Neb. 872, 174 N.W. 862 (1919).

Pursuant to subdivision (2) of this section, where a trial court is not called upon to make a determination of loss of earning power until after completion of vocational rehabilitation, the court is not required to retroactively look to the extent of loss of earning power as of the date of maximum medical improvement and disregard the documented change in loss of earning power flowing from completion of vocational rehabilitation. *Grandt v. Douglas County*, 14 Neb. App. 219, 705 N.W.2d 600 (2005).

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

Subsection (2) of this section provides for the compensation court to reduce the period for which partial disability benefits are recoverable when total disability is followed by partial disability, but does not allow the court to make a similar reduction in benefits when partial disability is followed by total disability. *Bennett v. J. C. Robinson Seed Co.*, 7 Neb. App. 525, 583 N.W.2d 370 (1998).

4. Permanent injury, specific classes

Disability as a basis for compensation under subdivision (3) of this section is determined by the loss of use of a body member, not loss of earning power. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The extent of disability to a scheduled member under subdivision (3) of this section can be expressed in terms of percent. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The third paragraph of subdivision (3) of this section does not require expert proof of permanent physical restrictions assigned to each injured member in order to perform the loss of earning capacity assessment thereunder. *Rodgers v. Nebraska State Fair*, 288 Neb. 92, 846 N.W.2d 195 (2014).

The amendment by 2007 Neb. Laws, L.B. 588, to subdivision (3) of this section, which permits an employee to recover benefits for loss of earning capacity from a loss or loss of use of more than one member resulting in at least a 30-percent loss of earning capacity, was substantive, rather than procedural, and, therefore, did not apply retroactively to a claimant injured in an accident before the effective date of the amendment. *Smith v. Mark Chrisman Trucking*, 285 Neb. 826, 829 N.W.2d 717 (2013).

For scheduled disabilities under subsection (3) of this section, a worker is compensated for his or her loss of use of a body member, loss of earning power is immaterial in determining compensation under subsection (3). *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

Under this section, impairments to the body as a whole are compensated in terms of loss of earning power or capacity, but impairments of scheduled members are compensated on the basis of loss of physical function. The test for determining whether a disability is to a scheduled member or to the body as a whole is the location of the residual impairment, not the situs of the injury. *Snyder v. IBP, Inc.*, 235 Neb. 319, 455 N.W.2d 157 (1990).

The language concerning the partial loss of use of multiple members contained in subsection (3) of this section applies only where the losses of use are the consequence of injuries sustained in a single compensable accident. *Rodriguez v. Prime Meat Processors*, 228 Neb. 55, 421 N.W.2d 32 (1988).

An employee suffering a schedule injury is entitled only to the compensation provided for in subsection (3) of this section, unless some unusual or extraordinary condition as to the other members or parts of the body develops as a result of the injury. *Evans v. American Community Stores*, 222 Neb. 538, 385 N.W.2d 91 (1986).

An injury that results in the inability to produce tears to wash the eye is a scheduled injury to the eye. *Doggett v. Brunswick Corp.*, 217 Neb. 166, 347 N.W.2d 877 (1984).

When a "schedule injury" results in unusual or extraordinary conditions which affect other parts of the body, recovery is not limited to the amount specified in the schedule. In this case, where a fractured femur healed in such a way that a deformity developed which affected the hip and other parts of the body, the employee was entitled to benefits beyond those in the schedule. *Scamperino v. Federal Envelope Co.*, 205 Neb. 508, 298 N.W.2d 477 (1980).

Compensation under subdivisions (1) and (2) herein are not available for schedule injuries compensable under subdivision

(3), except under unusual conditions. *Broderson v. Federal Chemical Co.*, 199 Neb. 278, 258 N.W.2d 137 (1977).

Compensation for disability resulting from a specific injury listed in subdivision (3) is limited to the amount specified. *Guerin v. Insurance Co. of North America*, 183 Neb. 30, 157 N.W.2d 779 (1968).

In the absence of other extraordinary physical injury, compensation for loss of foot cannot exceed the amount specified in subdivision (3) of this section. *Burrious v. North Platte Packing Co.*, 182 Neb. 122, 153 N.W.2d 353 (1967).

Loss of fingers on both hands alone does not entitle employee to compensation for permanent total disability. *Runyan v. State*, 179 Neb. 371, 138 N.W.2d 484 (1965).

The extent of permanent disability is not finally determinable until the employee is restored to good health insofar as the nature of his injuries will permit. *Uzendsoski v. City of Fullerton*, 177 Neb. 779, 131 N.W.2d 193 (1964).

Compensation under subdivision (3) includes the loss of binocular vision of the eye. *Brewer v. Hilberg*, 173 Neb. 863, 115 N.W.2d 437 (1962).

Loss of teeth and cut on lip were not compensable under subdivision (3). *Wengler v. Grosshans Lumber Co.*, 173 Neb. 839, 115 N.W.2d 415 (1962).

Compensation was not limited to loss of use of leg where disability was also to back. *Gilbert v. Metropolitan Utilities Dist.*, 156 Neb. 750, 57 N.W.2d 770 (1953).

Method of computing award for permanent partial loss of use of both hands stated. *Paulsen v. City of Lincoln*, 156 Neb. 702, 57 N.W.2d 666 (1953).

Combination of injuries to right and left wrists was sufficient to produce total disability. *Franzen v. Blakley*, 155 Neb. 621, 52 N.W.2d 833 (1952).

As it relates to an accidental injury to an eye, capable of industrial use and injured in industry, intent of section is to compensate for loss occasioned thereby to extent provided. *Gruber v. Stickelman*, 149 Neb. 627, 31 N.W.2d 753 (1948).

In a claim for compensation under subdivision (3), it is immaterial whether an industrial disability is present or not. *Bronson v. City of Fremont*, 143 Neb. 281, 9 N.W.2d 218 (1943).

In providing compensation for loss of eye it was the legislative intent to indemnify the injured workman to the full extent of his industrial loss occasioned thereby. *Bolen v. Buller*, 143 Neb. 237, 9 N.W.2d 204 (1943).

Where injury destroys the sight of an eye for industrial purposes, although with artificial means vision may be partially restored, an employee is entitled to compensation for loss of an eye. *Otoe Food Products Co. v. Cruickshank*, 141 Neb. 298, 3 N.W.2d 452 (1942).

Award for loss of use of eye is not based upon the amount of vision which existed previous to the accident, but is a specific amount to compensate to the full extent the industrial loss sustained. *Ames v. Sanitary District*, 140 Neb. 879, 2 N.W.2d 530 (1942).

Where fingers are injured and the disability resulting therefrom is normal, compensation cannot be awarded in addition to that provided in the statutory schedule for loss of use of fingers. *Ottens v. Western Contracting Co.*, 139 Neb. 78, 296 N.W. 431 (1941).

Where claimant does not suffer any industrial disability as the result of an accident, he is not entitled to recover for total disability under subdivision (1), but this does not prevent recovery of compensation under subdivision (3) where there is impairment of physiological functions. *Schmidt v. City of Lincoln*, 137 Neb. 546, 290 N.W. 250 (1940).

Injury resulting in loss of use of hand is compensable exclusively under subdivision (3) providing schedule for specific injuries. *Huff v. Omaha Cold Storage Co.*, 136 Neb. 907, 287 N.W. 764 (1939).

The provisions of subdivision (3) are exclusive, and the employee may not recover for the loss of stereoscopic vision plus

the loss of an eye, the stereoscopic vision being incidental to the loss. *Carlson v. Condon-Kiewit Co.*, 135 Neb. 587, 283 N.W. 220 (1939).

Where effect of injury to finger only is usual and natural one, compensation cannot be allowed for loss of use of hand. *Greseck v. Farmers Union Elevator Co.*, 123 Neb. 755, 243 N.W. 898 (1932).

Claimant for compensation who has sustained injury to both legs and both hands, is entitled to recover such proportion of compensation allowed for total disability, as the extent of loss of the several members bears to the total loss of two such members. *Radford v. Smith Bros., Inc.*, 123 Neb. 13, 241 N.W. 753 (1932).

Loss of use of leg compensable as if leg had been removed. *Schroeder v. Holt County*, 113 Neb. 736, 204 N.W. 815 (1925).

Compensation for the loss of an eye is confined exclusively to amount specified for loss of eye. *Abel Constr. Co. v. Goodman*, 105 Neb. 700, 181 N.W. 713 (1921).

Compensation for permanent loss of use of leg is limited to amount specified for loss of leg. *Hull v. United States Fidelity & Guaranty Co.*, 102 Neb. 246, 166 N.W. 628 (1918).

Loss of toe does not entitle employee to compensation unless injury has impaired earning power. *Epsten v. Hancock-Epsten Co.*, 101 Neb. 442, 163 N.W. 767 (1917).

Where deep cut severed the tendons in wrist and severed the ulnar nerve, award for permanent loss of use of hand was justified. *Miller v. Morris & Co.*, 101 Neb. 169, 162 N.W. 417 (1917).

Under subsection (3) of this section, if a worker has a two-member injury, compensation shall be determined by the facts, and the existing or concurrent injury to another part of the body is one of these facts, even if that injury is not to a member as defined in that same subsection. *Xayaseng v. Chief Indus., Inc.*, 7 Neb. App. 911, 586 N.W.2d 472 (1998).

5. Disability generally

This section provides compensation for three categories of job-related disabilities. Subdivision (1) sets the amount of compensation for total disability; subdivision (2) sets the amount of compensation for partial disability, except in cases covered by subdivision (3); and subdivision (3) sets out "schedule" injuries to specified parts of the body with compensation established therefor. *Picard v. P & C Group I*, 306 Neb. 292, 945 N.W.2d 183 (2020).

Disability, in contrast to impairment, is an economic inquiry in a workers' compensation case. It can be determined only within the context of the personal, social, or occupational demands or statutory or regulatory requirements that the individual is unable to meet because of the impairment. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

Disability is determined by diminution of employability or impairment of earning power or capacity, not necessarily by a physician's evaluation of loss of bodily function. *Sherard v. Bethphage Mission, Inc.*, 236 Neb. 900, 464 N.W.2d 343 (1991).

Disability is defined in terms of employability and earning capacity rather than in terms of loss of bodily function. *McGee v. Panhandle Technical Sys.*, 223 Neb. 56, 387 N.W.2d 709 (1986).

Disability under the Nebraska Workmen's Compensation Act is defined in terms of employability and earning capacity rather than in terms of loss of bodily function. *Minshall v. Plains Mfg. Co.*, 215 Neb. 881, 341 N.W.2d 906 (1983).

An employee who suffered back pain approximately one-half hour after doing heavy lifting suffered an injury arising out of and in the course of her employment and is entitled to workmen's compensation. Disability is defined in terms of employability and earning capacity rather than bodily function. Thus, one who is in constant pain, unable to lift anything, and whose condition is aggravated by prolonged sitting or standing may be totally disabled. *Wolfe v. American Community Stores*, 205 Neb. 763, 290 N.W.2d 195 (1980).

Disability under this section is defined in terms of employability, not bodily function. *Craig v. American Community Stores, Inc.*, 205 Neb. 286, 287 N.W.2d 426 (1980).

Disability under this section refers to loss of earning power rather than loss of bodily function; latter loss important only as it relates to earning capacity. *Colgrove v. City of Wymore*, 184 Neb. 712, 171 N.W.2d 639 (1969).

Disability is determinable by a consideration of employability and earnings. *Spangler v. Terry Carpenter, Inc.*, 177 Neb. 740, 131 N.W.2d 159 (1964).

Disability under subdivisions (1) and (2) is defined in terms of employability and earning capacity rather than in terms of loss of bodily function. *Wheeler v. Northwestern Metal Co.*, 175 Neb. 841, 124 N.W.2d 377 (1963).

Disability under subdivisions (1) and (2) refers to loss of earning power rather than loss of bodily function. *Thinnes v. Kearney Packing Co.*, 173 Neb. 123, 112 N.W.2d 732 (1962).

Disability under first two subdivisions is defined in terms of employability and earning capacity. *Pavel v. Hughes Brothers*, 167 Neb. 727, 94 N.W.2d 492 (1959).

6. Whole body impairment

If, by the point of maximum medical improvement, a claimant has developed a whole body impairment in addition to a scheduled member injury, the question is whether the work-related injury proximately caused the whole body impairment. If both injuries arose from the same work-related injury, because the scheduled member injury resulted in the whole body impairment in a natural and continuous sequence of events and the whole body impairment would not have occurred but for the work-related injury, then the claimant is entitled to disability benefits for the whole body impairment. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's compensable scheduled member injury has resulted in a whole body impairment and loss of earning power is a question of fact. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

Whether a claimant's scheduled member loss has caused a whole body impairment is properly resolved under a proximate cause inquiry at the point of the claimant's maximum medical improvement, when the claimant's permanent impairment is assessed. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

When a whole body injury is the result of a scheduled member injury, the member injury should be considered in the assessment of the whole body impairment. Under such circumstances, the trial court should not enter a separate award for the member injury in addition to the award for loss of earning capacity. To allow both awards creates an impermissible double recovery. *Bishop v. Specialty Fabricating Co.*, 277 Neb. 171, 760 N.W.2d 352 (2009).

When a worker sustains a scheduled member injury and a whole body injury in the same accident, the Nebraska Workers' Compensation Act does not prohibit the court from considering the impact of both injuries in assessing the loss of earning capacity. In making such an assessment, the court must consider whether the scheduled member injury adversely affects the worker such that the loss of earning capacity cannot be fairly and accurately assessed without considering the impact of the scheduled member injury upon the worker's employability. *Bishop v. Specialty Fabricating Co.*, 277 Neb. 171, 760 N.W.2d 352 (2009).

When a whole body injury is the result of a scheduled member injury, the member injury should be considered in the assessment of whole body impairment. An impermissible double recovery occurs if a separate award for a member injury is allowed in addition to an award for loss of earning capacity. *Madlock v. Square D Co.*, 269 Neb. 675, 695 N.W.2d 412 (2005).

When a worker sustains a scheduled member injury and a whole body injury in the same accident, the Nebraska Workers' Compensation Act does not prohibit the court from considering the impact of both injuries in assessing the loss of earning

capacity. In making such an assessment, the court must determine whether the scheduled member injury adversely affects the worker such that the loss of earning capacity cannot be fairly and accurately assessed without considering the impact of the scheduled member injury upon the worker's employability. *Zavala v. ConAgra Beef Co.*, 265 Neb. 188, 655 N.W.2d 692 (2003).

Impairments of the body as a whole are compensated in terms of loss of earning power or capacity rather than in terms of loss of physical function. *Snyder v. IBP, Inc.*, 222 Neb. 534, 385 N.W.2d 424 (1986).

7. Vocational rehabilitation

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under subdivision (4) of this section would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

A plain reading of subdivision (5) of this section requires that an employer must first offer, and the employee accept, vocational rehabilitation, or such rehabilitation must be court ordered before an employee becomes eligible for temporary total disability benefits. *Bixenmann v. H. Kehm Constr.*, 267 Neb. 669, 676 N.W.2d 370 (2004); *Thach v. Quality Pork International*, 253 Neb. 544, 570 N.W.2d 830 (1997).

Pursuant to subsection (5) of this section, a claimant is not entitled to temporary total disability benefits merely because he or she undergoes rehabilitation up to the time of maximum medical improvement, but, rather, is entitled to compensation for such reasonable period of time as is spent undergoing rehabilitation and he or she is therefore unable to work. *Stansbury v. HEP, Inc.*, 248 Neb. 706, 539 N.W.2d 28 (1995).

An employee, unless he or she is otherwise qualified to receive temporary total disability benefits, is entitled to such benefits only while undergoing rehabilitation which has been ordered by the compensation court. *Bindrum v. Foote & Davies*, 235 Neb. 903, 457 N.W.2d 828 (1990).

When prescribed as the only form of appropriate vocational rehabilitation for an injured employee, direct job placement is vocational rehabilitation within the meaning of subsection (5) of this section. *Bindrum v. Foote & Davies*, 235 Neb. 903, 457 N.W.2d 828 (1990).

A plan of direct job placement, when prescribed as the only form of appropriate vocational rehabilitation for an injured employee, is vocational rehabilitation within the meaning of subsection (5) of this section. *Carter v. Weyerhaeuser Co.*, 234 Neb. 558, 452 N.W.2d 32 (1990).

An employee undergoing rehabilitation services is entitled to receive compensation for temporary disability in addition to other benefits under the act. *Behrens v. Ken Corp.*, 191 Neb. 625, 216 N.W.2d 733 (1974).

8. Earning power

"Earning power," as used in subdivision (2) of this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability of the worker to earn wages in the employment in which the worker is engaged or for which he or she is fitted. *Picard v. P & C Group I*, 306 Neb. 292, 945 N.W.2d 183 (2020); *Weichel v. Store Kraft Mfg. Co.*, 10 Neb. App. 276, 634 N.W.2d 276 (2001).

Earning capacity determinations, for workers' compensation purposes, should not be distorted by factors such as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

Earning power, as used in subsection (2) of this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability of the worker to earn wages in the employment in which he or she is

fitted. *Frauendorfer v. Lindsay Mfg. Co.*, 263 Neb. 237, 639 N.W.2d 125 (2002).

Workers' compensation benefits are not measured by loss of bodily function, but by reduction in earning power or employability. Earning power is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability of the worker to earn wages in the employment in which he or she is engaged or for which he or she is fitted. *Variano v. Dial Corp.*, 256 Neb. 318, 589 N.W.2d 845 (1999).

"Earning power," as used in subsection (2) of this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability of the worker to earn wages in the employment in which he is engaged or for which he is fitted. *Cords v. City of Lincoln*, 249 Neb. 748, 545 N.W.2d 112 (1996).

Earning power, as used in subsection (2) of this provision, is measured by an evaluation of a worker's general eligibility to procure and hold employment, the worker's capacity to perform the required tasks, and the worker's ability to earn wages in employment for which he or she is engaged or fitted. *Thom v. Lutheran Medical Center*, 226 Neb. 737, 414 N.W.2d 810 (1987).

"Earning power", as used in this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability to earn wages. *Guerra v. Iowa Beef Processors, Inc.*, 211 Neb. 433, 318 N.W.2d 887 (1982).

"Earning power", as used in this section, includes the ability to procure employment generally, to hold a job, and to perform the tasks of the work, as well as the ability to earn wages. *Akins v. Happy Hour, Inc.*, 209 Neb. 236, 306 N.W.2d 914 (1981).

Earning power is not synonymous with wages, but includes eligibility to procure employment generally. *Frederick v. Cargill, Inc.*, 165 Neb. 589, 86 N.W.2d 575 (1957).

Earning power is not synonymous with wages. *Anderson v. Cowger*, 158 Neb. 772, 65 N.W.2d 51 (1954).

9. Labor market or hub community

A claimant who moved from a large labor market to a small labor market after her injury was not required to show her loss of earning power in both the large and the small labor market when her move for low cost housing was in good faith and motivated by economic necessity. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

A trial judge was not clearly wrong in concluding that a claimant could not reasonably seek employment in the large labor market 75 miles away, considering costs of fuel, insurance, maintenance for a vehicle, and claimant's limited physical ability to make such a commute. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

If a workers' compensation claimant relocates to a new community in good faith, the new community will serve as the hub community from which to assess the claimant's loss of earning power. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

In determining whether to include surrounding communities as part of the relevant labor market for assessing the claimant's loss of earning power, both the court-appointed vocational rehabilitation experts and the trial judge should consider the following factors: (1) availability of transportation, (2) duration of the commute, (3) length of workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, (5) economic feasibility of a person in the claimant's position working in that location, and (6) whether others who live in the claimant's hub community regularly seek employment in the prospective area. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

The first step in identifying the relevant labor market for assessing a claimant's loss of earning power in a workers'

compensation case is to determine whether the hub is where the injury occurred, or where the claimant resided when the injury occurred, or where the claimant resided at the time of the hearing. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

Communities surrounding the workers' compensation claimant's hub community should be considered part of that claimant's labor market for purposes of determining that claimant's earning capacity, but only to the extent that it would be reasonable for the claimant to seek employment in that location. *Giboo v. Certified Transmission Rebuilders*, 275 Neb. 369, 746 N.W.2d 362 (2008).

If a workers' compensation claimant cannot show a legitimate motive behind his or her postinjury relocation to a new community, the community where the claimant resided at the time the injury occurred will serve as the hub community from which to assess earning capacity. *Giboo v. Certified Transmission Rebuilders*, 275 Neb. 369, 746 N.W.2d 362 (2008).

When an employee injured in one community relocates to a new community, the new community will serve as the hub community from which to assess the claimant's earning capacity for purposes of workers' compensation, provided that the change of community was done in good faith and not for improper motives. *Giboo v. Certified Transmission Rebuilders*, 275 Neb. 369, 746 N.W.2d 362 (2008).

Whether it would be reasonable for a workers' compensation claimant to seek employment outside his or her hub community should be based on the totality of the circumstances, with regard for such factors as (1) availability of transportation, (2) duration of the commute, (3) length of the workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, and (5) economic feasibility of a person in the claimant's position working in that location. Regard might also be given to the more generalized inquiry of whether others who live in the claimant's hub community regularly seek employment in the prospective area. *Giboo v. Certified Transmission Rebuilders*, 275 Neb. 369, 746 N.W.2d 362 (2008).

10. Average weekly wage

In calculating the average weekly wage, a part-time hourly employee with a permanent disability is treated as though he or she had worked a 40-hour workweek. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

As to hourly employees, subsection (4) of this section alters the computation of average weekly wage under section 48-126 only to the extent that it requires that a minimum of 40 hours per week be utilized in making the computation, which would result in part-time hourly employees with permanent disabilities being treated as though they had worked a 40-hour workweek. *Ramsey v. State*, 259 Neb. 176, 609 N.W.2d 18 (2000).

In determining the average weekly wage of a self-employed claimant, business expenses should be deducted, and the business expenses set forth on a claimant's tax return shall be presumed correct. Either party may rebut this presumption of correctness by proving by a preponderance of the evidence that certain business expenses distort the claimant's true rate of compensation at the time of the accident. *Hull v. Aetna Ins. Co.*, 249 Neb. 125, 541 N.W.2d 631 (1996).

A self-employed claimant's average weekly wage under subsection (2) of this section shall be based upon the claimant's gross income less business expenses, i.e., net income. *Hull v. Aetna Ins. Co.*, 247 Neb. 713, 529 N.W.2d 783 (1995).

11. Miscellaneous

In a workers' compensation proceeding, the medical impairment rating given by a doctor may be an important factor for determining a claimant's impairment rating. *Bower v. Eaton Corp.*, 301 Neb. 311, 918 N.W.2d 249 (2018).

A return to work at wages equal to those received before the injury may be considered, but it does not preclude a finding that the workers' compensation claimant is either partially or totally disabled. *Zwiener v. Becton Dickinson-East*, 285 Neb. 735, 829 N.W.2d 113 (2013).

An employee's illegal residence or work status does not bar an award of indemnity for permanent total loss of earning capacity. *Moyera v. Quality Pork Internat.*, 284 Neb. 963, 825 N.W.2d 409 (2013).

In assessing a claimant's disability in a workers' compensation case, physical restrictions and impairment ratings are important, but once the claimant establishes the cause of disability, the trial judge is not limited to this evidence and may also rely on the claimant's testimony to determine the extent of the disability. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

This section does not prohibit a worker from concurrently receiving statutory benefits for separate injuries arising out of separate accidents, so long as the combined payments do not exceed the maximum weekly rate allowed by section 48-121.01. *Vega v. Iowa Beef Processors*, 264 Neb. 282, 646 N.W.2d 643 (2002).

Pursuant to subsection (2) of this section, past wage history, even if the claimant's position with the employer was only temporary, is not considered. *Cox v. Fagen Inc.*, 249 Neb. 677, 545 N.W.2d 80 (1996).

All calculations to be made under this section, and amendments thereto, have reference to wages, percentages, and results as of the time of injury. *McGowan v. Lockwood Corp.*, 245 Neb. 138, 511 N.W.2d 118 (1994).

Termination of payments for permanent partial disability was proper because plaintiff was not entitled to compensation in excess of the prescribed statutory maximum amount of weekly compensation. *Foreman v. State*, 240 Neb. 716, 483 N.W.2d 752 (1992).

The mere fact that after an injury an employee receives or is offered his former wages or a larger sum does not necessarily preclude a recovery under workers' compensation. *Schmid v. Nebraska Intergov. Risk Mgt. Assn.*, 239 Neb. 412, 476 N.W.2d 243 (1991).

A given condition cannot at one time be both temporary and permanent. *Yarns v. Leon Plastics, Inc.*, 237 Neb. 132, 464 N.W.2d 801 (1991).

In relation to "total disability" under subsection (1) of this section and "disability partial in character" under subsection (2) of this section, "temporary" and "permanent" refer to duration of disability; "total" and "partial" mean the degree of diminished employability or impaired earning capacity. *Sherard v. Bethphage Mission, Inc.*, 236 Neb. 900, 464 N.W.2d 343 (1991).

Loss of earning capacity or earning power is relevant only to impairment of the body as a whole. Impairment to a scheduled member is measured on the basis of loss of physical function. *Yager v. Belco Midwest*, 236 Neb. 888, 464 N.W.2d 335 (1991).

The ability to communicate in English, if relevant, should be considered in determining the magnitude of a worker's disability. *Mata v. Western Valley Packing*, 236 Neb. 584, 462 N.W.2d 869 (1990).

In making the calculations to determine a worker's benefits, an amendatory act may not be applied retroactively, and the statute as it existed at the time of injury governs. *Canas v. Maryland Cas. Co.*, 236 Neb. 164, 459 N.W.2d 533 (1990).

When a worker has reached maximum recovery, the remaining disability is permanent and such worker is no longer entitled to compensation for temporary disability. *Musil v. J.A. Baldwin Manuf. Co.*, 233 Neb. 901, 448 N.W.2d 591 (1989).

Injuries to the body as a whole are compensated under subdivisions (1) and (2) of this section, and refer to loss of employability and earning capacity, and not functional and medical loss alone. *Kleiva v. Paradise Landscapes*, 227 Neb. 80, 416 N.W.2d 21 (1987).

The Second Injury Fund may be considered a statutory employer for the purposes of payment of disability during rehabilitation. *Parker v. St. Elizabeth Comm. Health Ctr.*, 226 Neb. 526, 412 N.W.2d 469 (1987).

This section does not require that the 300-week period of compensation be reduced by the number of weeks during which

compensation is paid under subsection (3). *Parker v. St. Elizabeth Comm. Health Ctr.*, 226 Neb. 526, 412 N.W.2d 469 (1987).

The statutory scheme found herein is meant to compensate impairments of the body as a whole in terms of employability and loss of earning capacity, but to compensate impairments of scheduled members, rather, on the basis of loss of physical function. *Nordby v. Gould*, 213 Neb. 372, 329 N.W.2d 118 (1983).

In the case of an occupational disease the "date of the injury", within the meaning of the Workmen's Compensation Act, is the date when the disability is first incurred. Therefore, the maximum compensable rate is that rate in effect on the "date of the injury". *Osteen v. A.C. and S., Inc.*, 209 Neb. 282, 307 N.W.2d 514 (1981).

This court can overturn the factfindings of the Workmen's Compensation Court that plaintiff's injury was to a member rather than to his body as a whole only if the finding is not supported by sufficient competent evidence. In this case the treating surgeon's testimony as to the site of the injury, possible future difficulties, disability, and resulting limitations, along with testimony by another medical expert, supported the finding that plaintiff suffered a schedule injury of the leg. *Goers v. Bud Irons Excavating*, 207 Neb. 579, 300 N.W.2d 29 (1980).

A compensable injury to the ball and socket of the hip joint, where the residual impairment is not limited to the leg, is not a schedule injury under subdivision (3), but a disability under subdivision (1) or (2) relating to earning capacity and employability. *Jeffers v. Pappas Trucking, Inc.*, 198 Neb. 379, 253 N.W.2d 30 (1977).

In a claim for compensation hereunder, it is immaterial whether an industrial disability is present or not. *Sopher v. Nebraska P.P. Dist.*, 191 Neb. 402, 215 N.W.2d 92 (1974).

Losses in bodily function are important only insofar as they relate to earning capacity and loss thereof. *Shotwell v. Industrial Builders, Inc.*, 187 Neb. 320, 190 N.W.2d 624 (1971).

This section discussed in connection with controversy over reason for delay in making payments. *Marshall v. Columbus Steel Supply*, 187 Neb. 102, 187 N.W.2d 607 (1971).

Under Nebraska statute, any workmen's compensation policy is required to cover all of the employer's liability and all compensation awarded under the act. *Neeman v. Otoe County*, 186 Neb. 370, 183 N.W.2d 269 (1971).

Determination of amount of award is governed by law in force at time of accident. *Chadd v. Western Cas. & Sur. Co.*, 166 Neb. 483, 89 N.W.2d 586 (1958).

Disability under subdivisions (1) and (2) is measured in terms of employability and earning capacity rather than in terms of loss of bodily function. *Miller v. Peterson*, 165 Neb. 344, 85 N.W.2d 700 (1957).

In a claim for compensation under subdivision (3) of this section, it is immaterial whether an industrial disability is present or not. *Paulson v. Martin-Nebraska Co.*, 147 Neb. 1012, 26 N.W.2d 11 (1947).

Action was properly brought under this section where evidence showed employee was regular part-time employee under contract of hire at forty cents per hour. *Redfern v. Safeway Stores, Inc.*, 145 Neb. 288, 16 N.W.2d 196 (1944).

Claimant was entitled to award as made in second original action, employer having ceased payment on prior award. *Rexroat v. State*, 142 Neb. 596, 7 N.W.2d 163 (1942).

Compensation act provides for automatic reduction of compensation after certain periods of time to cover the situation of partial rehabilitation of employee who has received a permanent injury. *Ludwickson v. Central States Electric Co.*, 142 Neb. 308, 6 N.W.2d 65 (1942).

Amount paid under void settlement agreement by employer should be deducted from amount of award of compensation. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

Fact that employee receives larger wages after injury than before does not necessarily preclude recovery of compensation. *Micek v. Omaha Steel Works*, 135 Neb. 449, 282 N.W. 262 (1938).

Receipt of workmen's compensation did not bar city fireman from receiving fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

In cases not covered by schedule, amount of award and degree of disability is for the court to determine. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

An agreement to pay compensation must be approved by a compensation commissioner or compensation court or it is void, and part payment does not make such agreement actionable at common law. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

Parties are entitled to a final determination of the character of the disability, the full amount to be recovered, and the times when this amount shall be paid. *Dymak v. Haskins Bros. & Co.*, 132 Neb. 308, 271 N.W. 860 (1937).

Where compensation commissioner erred in computing compensation and allowed too much, employee is not entitled to attorney's fee on appeal to district court. *Truka v. McDonald*, 127 Neb. 780, 257 N.W. 232 (1934).

Workman may receive concurrent compensation for two or more injuries provided combined amounts do not exceed fifteen dollars a week. *Peterson v. Borden's Produce Co.*, 125 Neb. 404, 250 N.W. 240 (1933).

For disability resulting from permanent injury, the compensation to be allowed is a percentum of the daily wages during a time specified. *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899 (1928).

A workers' compensation claimant may receive permanent or temporary workers' compensation benefits for either partial or total disability. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

To compute an employee's statutory benefits pursuant to this section, the court should mathematically apply the statutory percentage set forth in this section to the difference between the injured employee's preinjury average weekly wage and the employee's postinjury average weekly wage. *Haro v. Beef America*, 9 Neb. App. 957, 622 N.W.2d 170 (2001).

Subsection (4) of this section requires part-time output workers with permanent disabilities to be treated as though they worked a minimum of a 40-hour workweek or a 5-day workweek. *Fordham v. West Lumber Co.*, 2 Neb. App. 716, 513 N.W.2d 52 (1994).

48-121.01 Maximum and minimum weekly income benefit; amounts; Governor; power to suspend.

(1)(a)(i) Commencing July 1, 1991, the maximum weekly income benefit under sections 48-121 and 48-122 shall be two hundred sixty-five dollars.

(ii) Commencing June 1, 1994, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred ten dollars.

(iii) Commencing January 1, 1995, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred fifty dollars.

(b) Commencing January 1, 1996, and each January 1 thereafter, the maximum weekly income benefit under sections 48-121 and 48-122 shall be one hundred percent, computed to the next higher whole dollar, of the state average weekly wage determined pursuant to section 48-121.02, except that for the purposes of calendar years commencing after 1996, the Governor may not later than November 15, 1996, and not later than each November 15 thereafter, conduct a public hearing after not less than thirty days' notice to consider whether he or she should issue an order to suspend the effectiveness of the change in the maximum weekly income benefit otherwise required by this subdivision for the ensuing calendar year. In order to make his or her decision, the Governor shall consider such factors as recent trends in economic conditions in the state, general wage levels, workers' compensation benefit levels, and workers' compensation premium levels. After such hearing but not later than November 30 immediately thereafter, the Governor may issue an order to suspend the effectiveness of the change in the maximum weekly income benefit otherwise required by this subdivision for the ensuing calendar year.

(2) The minimum weekly income benefit under sections 48-121 and 48-122 shall be forty-nine dollars.

Source: Laws 1985, LB 608, § 3; Laws 1987, LB 292, § 1; Laws 1990, LB 313, § 1; Laws 1993, LB 757, § 5.

Section 48-121 does not prohibit a worker from concurrently receiving statutory benefits for separate injuries arising out of separate accidents, so long as the combined payments do not exceed the maximum weekly rate allowed by this section. *Vega v. Iowa Beef Processors*, 264 Neb. 282, 646 N.W.2d 643 (2002).

48-121.02 State average weekly wage; how determined.

For purposes of section 48-121.01, the state average weekly wage shall be determined by the administrator of the Nebraska Workers' Compensation Court as follows: On or before October 1 of each year, the total insured wages reported to the Department of Labor for the preceding calendar year, excluding federal employees, shall be divided by the average monthly number of employees insured under the Employment Security Law. Such average monthly number of employees shall be determined by dividing the total number of employees insured under the Employment Security Law reported for such calendar year by twelve. The state average annual wage thus obtained shall be divided by fifty-two, and the state average weekly wage thus determined shall be rounded to the nearest whole cent. The state average weekly wage as so determined shall be applicable for the calendar year commencing January 1 following the October 1 determination.

Source: Laws 1993, LB 757, § 6; Laws 2005, LB 13, § 4.

Cross References

Employment Security Law, see section 48-601.

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 responsive-

ness 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.

- 1. Dependency
- 2. Medical and burial allowance
- 3. Miscellaneous

1. Dependency

This section identifies the ongoing obligation of the employer to pay medical expenses to a dependent following the death of the employee. *Olivotto v. DeMarco Bros. Co.*, 273 Neb. 672, 732 N.W.2d 354 (2007).

Where a deceased father had partially contributed to the support of a child residing with a former wife, such child was a partial dependent. *James v. Rainchief Constr. Co.*, 197 Neb. 818, 251 N.W.2d 367 (1977).

A dependent in fact is a person who was dependent upon the earnings of the deceased for support. *Warner v. State*, 190 Neb. 643, 211 N.W.2d 408 (1973).

In order to sustain a claim of partial dependency, plaintiff must show that employee regularly contributed to dependent an

average amount for a reasonable time prior to the accident. *Lighthill v. McCurry*, 175 Neb. 547, 122 N.W.2d 468 (1963).

Where employee died while proceedings were pending on appeal, cause would be remanded to determine rights of parties as to dependency. *Smith v. Stevens*, 173 Neb. 723, 114 N.W.2d 724 (1962).

Common-law wife was a dependent entitled to compensation for death of husband. *Bourelle v. Soo-Crete, Inc.*, 165 Neb. 731, 87 N.W.2d 371 (1958).

Plaintiff was awarded relief to which she was entitled under this and succeeding two sections. *Gilmore v. State*, 148 Neb. 10, 26 N.W.2d 296 (1947).

Wife living apart from husband may be entitled to compensation for husband's death if she was dependent upon him. *Bul-*

man v. Lyman-Richey Sand & Gravel Corporation, 144 Neb. 342, 13 N.W.2d 403 (1944).

To make out case of dependency, payments must be shown to have come from wages earned by the workman. Freburg v. Central Nebraska Public Power & Irr. Dist., 142 Neb. 868, 8 N.W.2d 209 (1943).

There must be proof of dependency in fact and not mere legal dependency to sustain an award of compensation for death of an employee. Meyer v. Nielsen Chevrolet Co., 137 Neb. 6, 287 N.W. 849 (1939).

Compensation awarded to dependents is that proportion of injured person's income paid to them for reasonable time prior to the injury. Kral v. Lincoln Steel Works, 136 Neb. 31, 284 N.W. 761 (1939).

Compensation to dependents in cases of death are fixed and determined by statute. Summers v. Railway Express Agency, 134 Neb. 237, 278 N.W. 476 (1938).

Action by injured employee, pending at time of death, may be revived by dependents giving bond or by administrator without bond, and pleadings for revivor must state facts sufficient to bring applicant within statutes. Palmer v. Saunders County, 117 Neb. 484, 221 N.W. 99 (1928).

Evidence was sufficient to show mother was wholly dependent on deceased son, and entitled to compensation as such. Lincoln Gas & Elec. Light Co. v. Watkins, 113 Neb. 619, 204 N.W. 391 (1925).

Where deceased had been sending periodically sums of money for support of mother in Italy, she was entitled to compensation as dependent. Venuto v. Carter Lake Club, 105 Neb. 568, 181 N.W. 377 (1921), 104 Neb. 782, 178 N.W. 760 (1920).

Commutation of compensation payments for benefit of non-resident alien dependents discussed and rule stated. Bailey v. United States Fidelity & Guaranty Co., 99 Neb. 109, 155 N.W. 237 (1915).

48-122.01 Compensation; schedule.

Compensation under section 48-122 shall be payable in the amount and to the following persons subject to the maximum limits specified in sections 48-122 and 48-122.03:

(1) If there is a widow or widower and no children of the deceased, as defined in section 48-124, to such widow or widower, sixty-six and two-thirds percent of the average weekly wage of the deceased, during widowhood or widowerhood;

(2) To the widow or widower, if there is a child or children living with the widow or widower, sixty percent of the average weekly wage of the deceased, or fifty-five percent, if such child is not or such children are not living with a widow or widower, and, in addition thereto, fifteen percent for each child. When there are two or more such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike;

(3) Two years' indemnity benefits in one lump sum shall be payable to a widow or widower upon remarriage;

(4) To the children, if there is no widow or widower, sixty-six and two-thirds percent of such wage for one child, and fifteen percent for each additional child, divided among such children, share and share alike;

(5) The income benefits payable on account of any child under this section shall cease when he or she dies, marries, or reaches the age of nineteen, or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled

2. Medical and burial allowance

Award for burial expense reduced to maximum allowed by statute at time of accident. Martin v. Frear, 184 Neb. 266, 167 N.W.2d 69 (1969).

Death benefits payable are fixed by this section. Copple v. Bowlin, 172 Neb. 467, 110 N.W.2d 117 (1961).

Widow of deceased employee was entitled to allowance for medical and funeral expense in addition to compensation at percentage of wage for three hundred and twenty-five weeks. Cole v. M. L. Rawlings Ice Co., 139 Neb. 439, 297 N.W. 652 (1941).

This section provides for burial allowance without deduction from other compensation. Aeschleman v. Haschenburger Co., 127 Neb. 207, 254 N.W. 899 (1934).

3. Miscellaneous

Workmen's compensation court and district court properly converted deceased's compensation of one-fourth of transportation charges into a daily wage rate and then to a five-day weekly wage rate. Loeffelholz v. Allied Mut. Ins. Co., 183 Neb. 112, 158 N.W.2d 219 (1968).

Award for accidental death could not rest upon possibilities, probabilities, or conjectural evidence. Wynia v. Hoelsing, 167 Neb. 136, 91 N.W.2d 404 (1958).

Death from occupational disease is compensable. Hauff v. Kimball, 163 Neb. 55, 77 N.W.2d 683 (1956).

Claimant was entitled to receive the proportion of the maximum weekly amount allowed by statute that his average contribution from his wages to support of foster parents bore to the total of his wages received. McKelvey v. Barton Mills, Inc., 152 Neb. 120, 40 N.W.2d 407 (1949).

City fireman was not barred from receiving fireman's pension by having received workmen's compensation. City of Lincoln v. Steffensmeyer, 134 Neb. 613, 279 N.W. 272 (1938).

as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of twenty-five. A child who originally qualified as a dependent by virtue of being less than nineteen years of age may, upon reaching age nineteen, continue to qualify if he or she satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution;

(6) To each parent, if actually dependent, twenty-five percent;

(7) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, twenty-five percent to each such dependent. If there should be more than one of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike;

(8) The income benefits of each beneficiary under subdivisions (6) and (7) of this section shall be paid until he or she, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of nineteen or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent; and

(9) A person ceases to be actually dependent when his or her income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subdivision and section 48-124.

Source: Laws 1973, LB 193, § 3; Laws 1986, LB 811, § 40; Laws 2000, LB 1221, § 4.

48-122.02 Compensation; cessation of income benefits; income benefits.

Upon the cessation of income benefits under section 48-122.01 to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

Source: Laws 1973, LB 193, § 4.

48-122.03 Compensation; maximum weekly income benefits in case of death.

The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed seventy-five percent of the average weekly wage of the deceased, subject to the maximum limits in section 48-122. The maximum aggregate limitation shall not operate in case of payment of two years' income benefits to the widow or widower upon remarriage, as provided under subdivi-

sion (3) of section 48-122.01, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under section 48-122.02. The classes of beneficiaries specified in subdivisions (1), (2), and (4) of section 48-122.01 shall have priority over all other beneficiaries in the apportionment of income benefits. If there is a widow or widower and a child or children and the maximums specified in section 48-122 and this section prevent full payment under either maximum, the compensation shall be apportioned between the widow or widower and the child or children on a pro rata basis. If there is more than one child living with the widow or widower and no child or children living separately, the apportionment shall be on the pro rata basis of sixty percent to the widow or widower and fifteen percent divided among the children. If there is more than one child not living with the widow or widower and no child or children living with her or him, the apportionment shall be on the pro rata basis of fifty-five percent to the widow or widower and twenty percent divided among the children. If one or more children are living with and one or more children are not living with her or him, the apportionment shall be on the pro rata basis of fifty-five percent to the widow or widower and twenty percent divided among the children. If the provisions of this section should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in subdivision (7) of section 48-122.01 in another class.

Source: Laws 1973, LB 193, § 5; Laws 1974, LB 882, § 1.

48-123 Compensation; death of employee receiving disability payments; schedule.

The death of an injured employee prior to the expiration of the period within which he or she would receive such disability payment shall be deemed to end such disability, and all liability for the remainder of such payment which he or she would have received in case he or she had lived shall be terminated, but the employer shall thereupon be liable for the following death benefit in lieu of any further disability indemnity: If the injury so received by such employee was the cause of his or her death and such deceased employee leaves dependents as hereinbefore specified, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the Nebraska Workers' Compensation Act to such deceased employee, to make the total compensation for the injury and death equal to the full amount which such dependents would have been entitled to receive under section 48-122, in case the accident had resulted in immediate death; and such benefits shall be payable in the same manner and subject to the same terms and conditions in all respects as payments made under such section. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of burial. If the employee dies from some cause other than the injury, there shall be no liability for compensation to accrue after his or her death.

Source: Laws 1913, c. 198, § 23, p. 589; R.S.1913, § 3664; Laws 1917, c. 85, § 9, p. 207; C.S.1922, § 3046; C.S.1929, § 48-123; R.S.1943, § 48-123; Laws 1973, LB 193, § 6; Laws 1986, LB 811, § 41.

Where injured employee dies during pendency of litigation, payment of compensation will be made in accordance with this section. *Smith v. Stevens*, 173 Neb. 723, 114 N.W.2d 724 (1962).

Employer was not liable for death benefit hereunder where evidence was not sufficient to support claim of compensable

injury. *Kuhtnick v. Carey*, 124 Neb. 762, 248 N.W. 89 (1933), 124 Neb. 761, 248 N.W. 92 (1933).

Action by injured employee, pending at time of death, may be revived by dependents or administrator. *Palmer v. Saunders County*, 117 Neb. 484, 221 N.W. 99 (1928).

48-124 Dependents; terms, defined.

The following persons shall be conclusively presumed to be dependent for support upon a deceased employee: (1) A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his injury or death; (2) a husband upon a wife with whom he is living or upon whom he is actually dependent at the time of her injury or death; and (3) a child or children under the age of nineteen years, or over such age, if physically or mentally incapable of self-support, or any child nineteen years of age or over who is actually dependent, or any child between nineteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.

The term child shall include a posthumous child, a child legally adopted or for whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an actually dependent stepchild, or a child born out of wedlock. Child shall not include a married child unless receiving substantially entire support from the employee. Grandchild shall mean a child, as above defined, of a child, as above defined, except that as to the latter child, the limitations as to age in the above definition do not apply.

Brother or sister shall mean a brother or sister under nineteen years of age, or nineteen years of age or over and physically or mentally incapable of self-support, or nineteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption but shall not include married brothers or married sisters unless receiving substantially entire support from the employee.

Parent shall mean a mother or father, a stepparent, a parent by adoption, a parent-in-law, and any person who for more than one year immediately prior to the death of the employee stood in the place of a parent to him or her, if actually dependent in each case.

Actually dependent shall mean dependent in fact upon the employee and shall refer only to a person who received more than half of his or her support from the employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word dependent shall mean any person entitled to death benefits. No person shall be considered a dependent, unless he or she be a member of the family of the deceased employee, or bears to him or her the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute dependents and the extent of their dependency shall initially be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees. No dependent of any injured employee shall be deemed, during the life of such employee, a party in interest

to any proceeding by him or her for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Source: Laws 1913, c. 198, § 24, p. 590; R.S.1913, § 3665; Laws 1921, c. 122, § 3, p. 531; C.S.1922, § 3047; C.S.1929, § 48-124; R.S.1943, § 48-124; Laws 1949, c. 161, § 1, p. 409; Laws 1971, LB 499, § 2; Laws 1973, LB 193, § 7; Laws 1986, LB 811, § 42; Laws 1989, LB 22, § 7; Laws 1997, LB 128, § 1; Laws 2000, LB 1221, § 5.

1. Wife
2. Children
3. Parents
4. Miscellaneous

1. Wife

Common-law wife was a dependent entitled to compensation. *Bourelle v. Soo-Crete, Inc.*, 165 Neb. 731, 87 N.W.2d 371 (1958).

Where wife was living apart from husband, and did not recognize his obligation to support her, recovery could not be had for death of husband. *Bulman v. Lyman-Richey Sand & Gravel Corporation*, 144 Neb. 342, 13 N.W.2d 403 (1944).

Wife, involuntarily confined in insane asylum at time of husband's death, was living with husband within provisions of Workmen's Compensation Act. *Harrison v. Cargill Commission Co.*, 126 Neb. 185, 252 N.W. 899 (1934).

Where common-law marriage was invalid, claimant was not the widow and not entitled to compensation hereunder. *Collins v. Hoag & Rollins, Inc.*, 122 Neb. 805, 241 N.W. 766 (1932).

2. Children

Subsection (3) of this section is in violation of the Equal Protection Clause of the U.S. Constitution and Neb. Const. art. I, sections 1 and 25, because it discriminates against illegitimate children by mandating a heavier burden of proof as opposed to a lesser burden of proof required of legitimate children. *Findaya W. v. A.T.E.A.M. Co.*, 249 Neb. 838, 546 N.W.2d 61 (1996).

Determination of child's dependency is a question of fact unless child lived with parent at parent's death. *James v. Rain-chief Constr. Co.*, 197 Neb. 818, 251 N.W.2d 367 (1977).

Child wholly dependent takes death benefits to the exclusion of children partially dependent. *Copple v. Bowlin*, 172 Neb. 467, 110 N.W.2d 117 (1961).

Where child of divorced parents did not live with and had not received support from father, child was not a dependent so as to be entitled to compensation upon death of employee father. *Meyer v. Nielsen Chevrolet Co.*, 137 Neb. 6, 287 N.W. 849 (1939).

Children seeking compensation as dependents of deceased must show actual dependency upon deceased. *Palmer v. Hamer*, 133 Neb. 362, 275 N.W. 322 (1937).

Contention of employer that children are entitled to compensation only from date widow remarried, was denied. *Aeschleman v. Haschenburger Co.*, 127 Neb. 207, 254 N.W. 899 (1934).

A plain reading of this section shows that "an actually dependent stepchild" is a separate qualifying relationship from that between the deceased employee and "an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death." *State v. Soto*, 11 Neb. App. 667, 659 N.W.2d 1 (2003).

3. Parents

Parents are not presumed to be dependents of minor children but may be found so to be on the facts of the individual case. *McKelvey v. Barton Mills, Inc.*, 152 Neb. 120, 40 N.W.2d 407 (1949).

Payment by son to parents upon indebtedness do not make out a case of partial dependency upon son for support. *Freburg v. Central Nebraska Public Power & Irr. Dist.*, 142 Neb. 868, 8 N.W.2d 209 (1943).

Where contributions are made by a son to support of needy parents over a reasonable period of time and with reasonable certainty as to amounts and when contributed, a finding of partial dependency of parents upon deceased employee is warranted. *Kral v. Lincoln Steel Works*, 136 Neb. 31, 284 N.W. 761 (1939).

Evidence was sufficient to establish nonresident mother's dependency. *Venuto v. Carter Lake Club*, 104 Neb. 782, 178 N.W. 760 (1920).

Dependency is not based solely upon a present legal obligation to support, and is not determined by the fact that a decedent had or had not actually contributed to the support of a parent before the date of the accident. *Parson v. Murphy*, 101 Neb. 542, 163 N.W. 847, L.R.A. 1918F 479 (1917).

4. Miscellaneous

Question of dependency is to be determined in accordance with the fact situation existing at time of injury. *Lighthill v. McCurry*, 175 Neb. 547, 122 N.W.2d 468 (1963).

Questions of dependency upon death of employee are to be determined in accordance with this section. *Smith v. Stevens*, 173 Neb. 723, 114 N.W.2d 724 (1962).

Dependency in fact is not created by contributions made by an employee for purposes other than support of the claimed dependent. *Pieters v. Drake-Williams-Mount Co.*, 142 Neb. 315, 6 N.W.2d 69 (1942).

Where employee, in absence of fraud, signed release, it is binding on dependents after his death. *Welton v. Swift & Co.*, 125 Neb. 455, 250 N.W. 661 (1933).

Dependents are not necessary parties in interest in compensation action brought in employee's lifetime. Employee's settlement, while in full possession of mental faculties, in absence of fraud, binds dependents. *Bliss v. Woods*, 120 Neb. 790, 235 N.W. 334 (1931).

Action to recover compensation for death may be by adult dependent, guardian or trustee of minor dependent, or by executor or administrator of deceased. *Coster v. Thompson Hotel Co.*, 102 Neb. 585, 168 N.W. 191 (1918).

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.

1. Attorney's fees allowed
2. Attorney's fees not allowed
3. Reasonable controversy
4. Waiting time
5. Miscellaneous

1. Attorney's fees allowed

The requested fees need not have been incurred under a fee agreement in order to be recoverable as reasonable attorney fees under subdivision (4)(b) of this section. *Sellers v. Reefer Systems*, 305 Neb. 868, 943 N.W.2d 275 (2020).

Interest that is assessed when a claimant is awarded attorney fees on an enforcement motion is calculated from the time each installment of benefits became due to the date of payment, rather than being assessed on the full amount of benefits owed from the first date that compensation was payable. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

An employee is entitled to reasonable attorney fees when he or she obtains an increase, however trivial, in the amount of a workers' compensation award upon review. *Hagelstein v. Swift-Eckrich, Div. of ConAgra*, 261 Neb. 305, 622 N.W.2d 663 (2001).

Payment of a court-approved lump-sum settlement is subject to the provisions of this section. *Hollandsworth v. Nebraska Partners*, 260 Neb. 756, 619 N.W.2d 579 (2000).

Pursuant to subsection (1) of this section, the phrase "reduction in the amount of such award" includes an attempt to apportion the responsibility for payment of an award among insurers and the Second Injury Fund. The elements required to establish the Second Injury Fund's liability are (1) a prior permanent partial disability known to the employer and hindering the employee's employability, (2) a subsequent compensable injury causing permanent disability to the employee, and (3) a combined permanent disability substantially greater in degree or percentage than would have resulted from the subsequent injury considered alone. The Second Injury Fund's liability cannot be determined until and unless the employee's subsequent injury is permanent. *Miller v. Meister & Segrist*, 255 Neb. 805, 587 N.W.2d 399 (1998).

The Second Injury Fund is "employer" within the meaning of this section. If the Second Injury Fund, on appeal, fails to obtain reduction of award of Workers' Compensation Court on rehearing, employee is entitled to reasonable attorney fees for appeal, to be assessed against the Second Injury Fund. *Sherard v. Bethphage Mission, Inc.*, 236 Neb. 900, 464 N.W.2d 343 (1991).

Mere reduction of one aspect of the compensation award without a corresponding reduction of the total award does not mean that the employer obtained a reduction of the award such that the employee is not entitled to an attorney fee. *Schlotfeld v. Mel's Heating & Air Conditioning*, 233 Neb. 488, 445 N.W.2d 918 (1989).

Where there is no reasonable controversy regarding an employee's entitlement to workers' compensation, this section authorizes an award to the employee of an attorney fee and a fifty-percent payment for waiting time on delinquent payments. *Roesler v. Farmland Foods*, 232 Neb. 842, 442 N.W.2d 398 (1989).

Where an award for permanent partial disability is made on rehearing, following an award for temporary total disability, the employee is entitled to an award of attorney fees on the rehearing. *Mulder v. Minnesota Mining & Mfg. Co.*, 219 Neb. 241, 361 N.W.2d 572 (1985).

An amendment to a workmen's compensation statute which provides for the payment of attorney fees relates to the remedy and affects procedure only, and does not interfere with substantive rights. Therefore, such fees as are provided may be taxed as an item of costs in entering judgment on a claim that arose before the amendatory act was passed. *Smith v. Fremont Contract Carriers*, 218 Neb. 652, 358 N.W.2d 211 (1984).

Statutory language, "reduction in the amount of such award", ordinarily refers to the total amount of the award to the employee and not to a reduction in the amount to be paid by a specific defendant who is liable to pay a portion of the award. The

Second Injury Fund, within the meaning of this section, is an employer and if, on appeal to this court, it fails to obtain any reduction in the amount of the award on rehearing, the employee is entitled to a reasonable sum as attorney fees in this court, to be assessed against the fund. *Pollard v. Wright's Tree Service, Inc.*, 212 Neb. 187, 322 N.W.2d 397 (1982).

Where an employer applies for a rehearing from an award by a single judge of the Workmen's Compensation Court and obtains a reduction in the award, the Workmen's Compensation Court should not allow the employee attorney fees for the rehearing. But if the employer then appeals to this court and fails to obtain a further reduction, then the employee should be awarded attorney fees for the appeal. *Goers v. Bud Irons Excavating*, 207 Neb. 579, 300 N.W.2d 29 (1980).

Attorney's fee of one thousand five hundred dollars allowed to claimant-appellee. *Alcaraz v. Wilson & Co., Inc.*, 207 Neb. 255, 298 N.W.2d 160; *Mohr v. Soil Mover Manufacturing Co.*, 207 Neb. 261, 298 N.W.2d 166 (1980).

Reasonable attorney's fee normally allowed where compensation court award is not reduced on appeal. *Harrington v. State*, 198 Neb. 4, 251 N.W.2d 653 (1977).

A reasonable attorney's fee is generally granted an employee if the employer appeals but fails to obtain a reduction of the award. *Weikhorst v. Rural Electric Co., Inc.*, 186 Neb. 445, 183 N.W.2d 747 (1971).

Where award of compensation was affirmed, employee was entitled to an attorney's fee for services of attorney in Supreme Court. *Welke v. City of Ainsworth*, 179 Neb. 496, 138 N.W.2d 808 (1965).

Attorney's fee was properly awarded to plaintiff's attorneys upon affirmance of award for permanent total disability. *Haskett v. National Biscuit Co.*, 177 Neb. 915, 131 N.W.2d 597 (1964).

Attorney's fee was properly allowed for services in Supreme Court. *Appleby v. Great Western Sugar Co., Inc.*, 176 Neb. 102, 125 N.W.2d 103 (1963).

Allowance of attorney's fee was proper. *Shada v. Whitney*, 172 Neb. 220, 109 N.W.2d 167 (1961).

When employer refuses to pay compensation, attorney's fee can be allowed for services in compensation court. *Pavel v. Hughes Brothers, Inc.*, 167 Neb. 727, 94 N.W.2d 492 (1959).

Where award of workmen's compensation court was affirmed, attorney's fee was properly allowed. *Sears v. City of Omaha*, 164 Neb. 869, 83 N.W.2d 857 (1957).

Where employer on appeal failed to obtain reduction in award, attorney's fee was authorized. *Haler v. Gering Bean Co.*, 163 Neb. 748, 81 N.W.2d 152 (1957).

Statute limits the right to an attorney's fee to a specific situation. *Fidelity & Casualty Co. v. Kennard*, 162 Neb. 220, 75 N.W.2d 553 (1956).

Where employer failed to secure reduction of award, attorney's fee was authorized. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Attorney's fee was properly allowed. *Dietz v. State*, 157 Neb. 324, 59 N.W.2d 587 (1953).

Attorney's fee was allowed for services in Supreme Court. *Schneider v. Village of Shickley*, 156 Neb. 683, 57 N.W.2d 527 (1953).

Where employer failed to secure reduction in award on appeal to Supreme Court, attorney's fee was allowable. *Anderson v. Bituminous Casualty Co.*, 155 Neb. 590, 52 N.W.2d 814 (1952).

Allowance of attorney's fee was proper. *Miller v. Schlereth*, 152 Neb. 805, 42 N.W.2d 865 (1950).

Where employer fails to obtain reduction of award in both district and Supreme Court, attorney's fee in each court may be allowed. *Werner v. Nebraska Power Co.*, 149 Neb. 408, 31 N.W.2d 315 (1948).

Where employer appeals from award of district court and fails to obtain reduction in amount of award, Supreme Court will allow attorneys' fees for services in appellate court. *McRae v. Ulrich, Inc.*, 147 Neb. 214, 22 N.W.2d 697 (1946).

When employer appeals to Supreme Court from an award of compensation and fails to obtain reduction in amount of award, Supreme Court will allow employee a reasonable attorney's fee. *Gilmore v. State*, 146 Neb. 647, 20 N.W.2d 918 (1945).

Attorney's fee should be allowed whenever employer appeals to district court and fails to obtain reduction in amount of award. *Weitz v. Johnson*, 143 Neb. 452, 9 N.W.2d 788 (1943).

Where award of compensation by district court is affirmed upon appeal, a reasonable attorney's fee for appellate services is taxable against employer as costs. *Chatt v. Massman Construction Co.*, 138 Neb. 288, 293 N.W. 105 (1940).

Amendment of statute allowing attorneys' fees affected remedy only and applied to cases which arose prior to the amendment. *Solomon v. A. W. Farney, Inc.*, 136 Neb. 338, 286 N.W. 254 (1939).

Allowance for services in Supreme Court was proper. *Ludwickson v. Central States Electric Co.*, 135 Neb. 371, 281 N.W. 603 (1938).

Additional attorney's fee for services in Supreme Court should be allowed where no reduction in award is obtained. *Perkins v. Young*, 133 Neb. 234, 274 N.W. 596 (1937).

Where employer on appeal to district court secured reduction in award, employee was not entitled to attorney's fees there, but where further appeal was taken to Supreme Court and no further reduction obtained, attorney's fees for services in appellate court were proper. *Harmon v. J. H. Wiese Co.*, 121 Neb. 137, 236 N.W. 186 (1931).

Compensation claimant is entitled to reasonable attorney's fees, where appealing employer fails to reduce award. *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899 (1928); *Western Newspaper Union v. Dee*, 108 Neb. 303, 187 N.W. 919 (1922); *Derr v. Kirkpatrick*, 106 Neb. 403, 184 N.W. 91 (1921); *Ulaski v. Morris & Co.*, 106 Neb. 782, 184 N.W. 946 (1921).

Additional fees are allowable for services in Supreme Court where appealing employer fails to reduce award. *Lincoln Gas & Electric Light Co. v. Watkins*, 113 Neb. 619, 204 N.W. 391 (1925); *Derr v. Kirkpatrick*, 106 Neb. 403, 184 N.W. 91 (1921).

When an attorney fee is allowed pursuant to this section, interest shall be assessed on the final award of weekly compensation benefits, not "medical payments." *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

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

The Second Injury Fund is an employer for purposes of this section. If the Second Injury Fund files an unsuccessful appeal, attorney fees are to be taxed against the Second Injury Fund and not against the employer. *Bryson v. Vickers, Inc.*, 7 Neb. App. 595, 584 N.W.2d 44 (1998).

2. Attorney's fees not allowed

By filing a release pursuant to section 48-139(3), a worker waives his or her right to ask for penalties and attorney fees under this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

Because the employee did not receive an award in a proceeding before the compensation court, attorney fees cannot be awarded under subsection (1) of this section. The unequivocal language of this section clearly reads that an award of attorney fees is a prerequisite before interest on the compensation amount due to a claimant may be awarded under subsection (2)

of this section. *Blizzard v. Chrisman's Cash Register Co.*, 261 Neb. 445, 623 N.W.2d 655 (2001).

An employee is not entitled to an award of attorney fees when the employer, on appeal, obtains a reduction in the employee's overall award. *Ira v. Swift-Eckrich*, 251 Neb. 411, 558 N.W.2d 40 (1997).

This statute does not authorize the award of an attorney fee where there exists a reasonable controversy between the parties as to the entitlement of compensation. *Beavers v. IBP, Inc.*, 222 Neb. 647, 385 N.W.2d 896 (1986).

If the employer received a reduction of the award of the compensation court, the employee's attorney fees in this court will not be taxed as costs against the employer. *Hare v. Watts Trucking Service*, 220 Neb. 403, 370 N.W.2d 143 (1985).

In a workmen's compensation case an employee may not withhold evidence of medical expense at the first hearing, inadvertent though it might be, and then claim on rehearing that an attorney fee should be awarded because the award was increased. *Smith v. Fremont Contract Carriers*, 218 Neb. 652, 358 N.W.2d 211 (1984).

Where an employer has obtained a termination of a previous running award for temporary total disability, it cannot be said that such employer has failed to obtain "any reduction in the amount of such award" so as to be liable for attorney fees within the meaning of this statute. *Butler v. Midwest Supply Co.*, 212 Neb. 421, 322 N.W.2d 815 (1982).

Where an employer applies for a rehearing from an award by a single judge of the Workmen's Compensation Court and obtains a reduction in the award, the Workmen's Compensation Court should not allow the employee attorney fees for the rehearing. But if the employer then appeals to this court and fails to obtain a further reduction, then the employee should be awarded attorney fees for the appeal. *Goers v. Bud Irons Excavating*, 207 Neb. 579, 300 N.W.2d 29 (1980).

Under facts in this case, an award of an attorney's fee was not permitted. *Reis v. Douglas County Hospital*, 193 Neb. 542, 227 N.W.2d 879 (1975).

No attorney fee may be assessed against employer who offered no evidence in compensation court and alleged the award was correct and should be affirmed in the district court. *Breed v. Interstate Glass Co.*, 188 Neb. 284, 196 N.W.2d 169 (1972).

An attorney's fee cannot be allowed for legal services where employer obtains a reduction of award on his appeal. *Harrington v. Missouri Valley Constr. Co.*, 182 Neb. 434, 155 N.W.2d 355 (1967).

Where district court denied an award of compensation, attorney's fee was not authorized on reversal by Supreme Court. *Tilghman v. Mills*, 169 Neb. 665, 100 N.W.2d 739 (1960).

Where appealing party is not employer, attorney's fee cannot be allowed. *Franzen v. Blakley*, 155 Neb. 621, 52 N.W.2d 833 (1952).

Attorney's fee allowed for services in district court but disallowed in Supreme Court where district court increased award and Supreme Court reduced it. *Solheim v. Hastings Housing Co.*, 151 Neb. 264, 37 N.W.2d 212 (1949).

Where employer secured modification of award in Supreme Court, attorney's fee in that court could not be allowed. *Sporic v. Swift & Co.*, 149 Neb. 489, 31 N.W.2d 404, modifying 149 Neb. 246, 30 N.W.2d 891 (1948).

The right to tax attorney's fees in compensation cases is purely statutory, and award for services rendered in compensation court is not authorized. *Faulhaber v. Roberts Dairy Co.*, 147 Neb. 631, 24 N.W.2d 571 (1946).

When plaintiff is denied award in both compensation court and district court, Supreme Court cannot allow attorney's fee. *Elliott v. Gooch Feed Mill Co.*, 147 Neb. 309, 23 N.W.2d 262 (1946).

Attorney's fee is not allowable to employee who appeals from adverse decision in the district court which denied an award of compensation and Supreme Court holds employee entitled to

compensation. *Lee v. Lincoln Cleaning & Dye Works*, 145 Neb. 124, 15 N.W.2d 330 (1944).

Section does not authorize allowance of attorney's fees where employee takes an appeal. *Rexroat v. State*, 143 Neb. 333, 9 N.W.2d 305 (1943).

Attorney's fee is not allowable where an employee is denied recovery in compensation court, and, on appeal to district court, an award of compensation is made. *Schirmer v. Cedar County Farmers Tel. Co.*, 139 Neb. 182, 296 N.W. 875 (1941).

Allowance of attorney's fee is erroneous where employer has not neglected or refused to pay compensation, or appealed from an award made to the employee. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

Where district court, on appeal from compensation commissioner, fixed date when payment of compensation should begin at later date than that fixed by compensation commissioner, such change amounted to reduction of the award, and district court had no authority to allow attorney's fee for plaintiff's attorney. *Mulvey v. City of Lincoln*, 131 Neb. 279, 267 N.W. 459 (1936).

Where employer is entitled to a reduction on appeal, employee is not entitled to an attorney's fee. *Truka v. McDonald*, 127 Neb. 780, 257 N.W. 232 (1934).

Where employer on appeal to district court secured reduction in award, employee was not entitled to attorney's fees there, but where further appeal was taken to Supreme Court and no further reduction obtained, attorney's fees for services in appellate court were proper. *Harmon v. J. H. Wiese Co.*, 121 Neb. 137, 236 N.W. 186 (1931).

Compensation claimant is not entitled to attorney's fee where he, and not employer, appeals. *Updike Grain Co. v. Swanson*, 104 Neb. 661, 178 N.W. 618 (1920).

3. Reasonable controversy

A "reasonable controversy" for the purpose of this section exists if (1) there is a question of law previously unanswered by the Supreme Court, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) the properly adduced evidence would support reasonable but opposite conclusions by the compensation court about an aspect of an employee's claim, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

Whether a reasonable controversy exists under this section is a question of fact. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

For the purposes of this section, a reasonable controversy exists if (1) there is a question of law previously unanswered by the Supreme Court, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the compensation court about an aspect of an employee's claim, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. When there is some conflict in the medical testimony adduced at trial, reasonable but opposite conclusions could be reached by the compensation court. *Nichols v. Fairway Bldg. Prods.*, 294 Neb. 657, 884 N.W.2d 124 (2016).

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

A reasonable controversy under this section may exist if the properly adduced evidence would support reasonable but opposite conclusions by the Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Stacy v. Great Lakes Agri Mktg.*, 276 Neb. 236, 753 N.W.2d 785 (2008).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim—it simply must have an actual basis in law or fact for disputing the claim and refusing compensation. *Stacy v. Great Lakes Agri Mktg.*, 276 Neb. 236, 753 N.W.2d 785 (2008).

Whether a reasonable controversy exists under this section is a question of fact. *Stacy v. Great Lakes Agri Mktg.*, 276 Neb. 236, 753 N.W.2d 785 (2008); *Carter v. Weyerhaeuser Co.*, 234 Neb. 558, 452 N.W.2d 32 (1990); *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation. A reasonable controversy may exist if there is a question of law previously unanswered by the Supreme Court, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act. *Hobza v. Seedorff Masonry, Inc.*, 259 Neb. 671, 611 N.W.2d 828 (2000).

This section authorizes a 50-percent penalty payment for waiting time where the employer fails to pay compensation after 30 days' notice of the disability and where no reasonable controversy exists regarding the employee's claim for benefits. Waiting-time penalties apply to final adjudicated awards or final orders of the Workers' Compensation Court. The purpose of the 30-day waiting-time penalty and the provision for attorney fees is to encourage prompt payment by making delay costly if the award has been finally established. The only legitimate excuse for delay in the payment of workers' compensation benefits is the existence of a genuine dispute from a medical or legal standpoint that any liability exists, and the fact that an employer is considering an appeal with no appeal actually filed is not sufficient evidence to sustain a finding of genuine medical or legal doubt as to liability. *Gaston v. Appleton Elec. Co.*, 253 Neb. 897, 573 N.W.2d 131 (1998).

This section authorizes a 50-percent penalty payment for waiting time where the employer fails to pay compensation after 30 days' notice of the disability and where no reasonable controversy exists regarding the employee's claim for benefits. Waiting-time penalties apply to final adjudicated awards. The purpose of the 30-day waiting-time penalty and the provision for attorney fees is to encourage prompt payment by making delay costly if the award has been finally established. The only legitimate excuse for delay in the payment of workers' compensation benefits is the existence of a genuine dispute from a medical or legal standpoint that any liability exists, and the fact that an employer is considering filing an application for review with no such application actually filed is not a sufficient reason to sustain a finding of genuine medical or legal doubt as to liability. In order to refrain from paying workers' compensation benefits and to avoid the penalty assessable under this section, the employer must demonstrate that he or she has an actual basis, in law or fact, for disputing the employee's claim. *Roth v. Sarpy Cty. Highway Dept.*, 253 Neb. 703, 572 N.W.2d 786 (1998).

The concept of the presence of a reasonable controversy is to be applied only to the determination as to whether an employee is entitled to the statutory penalties, not including attorney fees, as set out in this section. *Snyder v. IBP, Inc.*, 235 Neb. 319, 455 N.W.2d 157 (1990).

Under this section, the concept of reasonable controversy is to be applied only to determinations of statutory penalties, not including attorney fees. *Behrens v. American Stores Packing Co.*, 234 Neb. 25, 449 N.W.2d 197 (1989).

Although the total amount of compensation may be in dispute, the employer has a duty to promptly pay any undisputed compensation, and the only legitimate excuse for delay of compensation is the existence of genuine doubt from a medical or legal standpoint that any liability exists. *Musil v. J.A. Baldwin Manuf. Co.*, 233 Neb. 901, 448 N.W.2d 591 (1989).

To avoid the payments assessable under this section, an employer need not prevail in opposition to an employee's claim for compensation, but must have an actual basis, in law or fact, for disputing the employee's claim and refraining from payment of compensation. *Musil v. J.A. Baldwin Manuf. Co.*, 233 Neb. 901, 448 N.W.2d 591 (1989).

Whether a reasonable controversy exists for the purpose of determining whether an attorney fee or delay penalty should be awarded under the provisions of this section is a question of fact. *Roesler v. Farmland Foods*, 232 Neb. 842, 442 N.W.2d 398 (1989).

Whether a reasonable controversy exists under this section is a question of fact for the Workers' Compensation Court. *Tlanka v. Goodyear Tire & Rubber Co.*, 225 Neb. 789, 408 N.W.2d 291 (1987).

Reasonable controversy existed requiring denial of waiting time. Attorney's fee was properly allowed. *Shamburg v. Shamburg*, 153 Neb. 495, 45 N.W.2d 446 (1950).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006); *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

The fact that an insurance company makes a settlement offer by itself does not show the existence of a reasonable controversy regarding the employee's claim for benefits pursuant to this section. *Kubik v. Union Ins. Co.*, 4 Neb. App. 831, 550 N.W.2d 691 (1996).

4. Waiting time

This section authorizes a 50-percent penalty payment for waiting time involving delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

This section authorizes a 50-percent payment for waiting time involving delinquent payment of compensation and attorney fees where there is no reasonable controversy regarding an employee's claim for workers' compensation. *Nichols v. Fairway Bldg. Prods.*, 294 Neb. 657, 884 N.W.2d 124 (2016); *Mendoza v. Omaha Meat Processors*, 225 Neb. 771, 408 N.W.2d 280 (1987); *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006); *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

The waiting-time penalty and attorney fees for waiting-time proceedings provided under this section are rights under the

Nebraska Workers' Compensation Act. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

No waiting-time penalty is required for an employer's delinquent payment of medical expenses, because such expenses do not constitute compensation within the meaning of this section. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

Even if an employer disputes in good faith the total compensation owed a claimant pending trial, the employer must pay any portion of the claim for which it admits liability. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

If an appellate court determines that no reasonable controversy existed regarding a claim for workers' compensation benefits, the employer must pay waiting-time penalties from the date of the award until it pays the benefits under the appellate court's mandate. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

There are two circumstances under this section in which the 30-day time limit applies for the payment of compensation: (1) upon the employee's notice of disability if no reasonable controversy exists regarding the claim or (2) after a final adjudicated award if one of the parties appeals and a reasonable controversy existed regarding the claim pending trial. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

When a party appeals a workers' compensation award to an appellate court, the award is not final and the waiting-time period for payment of benefits does not commence to run until the appellate court's mandate is filed in the Workers' Compensation Court. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

Where a reasonable controversy exists between an employer and an employee as to the payment of workers' compensation, the employer is not liable for the waiting-time penalties during the time the case is pending in the courts for final determination. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

Under former law, in order to harmonize this section and sections 48-199 and 48-1,102 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds \$50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. *Soto v. State*, 270 Neb. 40, 699 N.W.2d 819 (2005).

Under former law, with respect to that portion of a workers' compensation award against the State which exceeds \$50,000, the 30-day period specified in subsection (1) of this section does not begin until the first day after the judgment becomes final on which the State could request review and appropriation pursuant to section 48-1,102 during a regular session of the Legislature. A waiting-time penalty may be assessed pursuant to this section if payment is not made within 30 calendar days thereafter. *Soto v. State*, 269 Neb. 337, 693 N.W.2d 491 (2005).

Under former law, for purposes of subsection (1) of this section, compensation sent within 30 days of the notice of disability or the entry of a final order, award, or judgment of compensation is not delinquent. *Brown v. Harbor Fin. Mortgage Corp.*, 267 Neb. 218, 673 N.W.2d 35 (2004).

This section authorizes a 50-percent penalty payment for waiting time involving the delinquent payment of compensation and an attorney fee, where there is no reasonable controversy regarding an employee's claim for workers' compensation. Whether a reasonable controversy exists pertinent to this section is a question of fact. *McBee v. Goodyear Tire & Rubber Co., Inc.*, 255 Neb. 903, 587 N.W.2d 687 (1999).

Pursuant to subsection (1) of this section, a workers' compensation insurer's bad faith refusal to timely authorize needed medical treatment for an employee's work-related injury is

completely intertwined with the employee's work-related injury; thus, the employee's remedy is limited to that provided for under the Nebraska Workers' Compensation Act. *Ihm v. Crawford & Co.*, 254 Neb. 818, 580 N.W.2d 115 (1998).

Pursuant to subsection (1) of this section, where the total amount of compensation due for permanent disability is in dispute, the employer has a duty under the provisions of subsection (1) to pay within 30 days of the notice of disability any undisputed compensation; the only legitimate excuse for delay in the payment is the existence of a genuine dispute from a medical or legal standpoint that any liability exists. *Grammer v. Endicott Clay Products*, 252 Neb. 315, 562 N.W.2d 332 (1997).

Under this section, the 50-percent penalty for waiting time applies only when payments are delinquent after 30 days' notice has been given of disability or there is no reasonable controversy and the employer refuses payment or neglects to pay compensation for 30 days after injury. In the latter situation, a reasonable attorney fee shall be allowed if the employee receives an award after proceedings in the compensation court. *Briggs v. Consolidated Freightways*, 234 Neb. 410, 451 N.W.2d 278 (1990).

Where there is no reasonable controversy regarding an employee's entitlement to workers' compensation, this section authorizes award to the employee of an attorney fee and a 50-percent payment for waiting time on delinquent payments, and the worker is entitled to recover interest on the payments which have accrued at the time payment is made by the employer. *Musil v. J.A. Baldwin Manuf. Co.*, 233 Neb. 901, 448 N.W.2d 591 (1989).

Where there is no reasonable controversy regarding an employee's claim for workers' compensation, this section authorizes the award to the employee of an attorney fee and a fifty-percent payment for waiting time on delinquent payments. *Rodriguez v. Prime Meat Processors*, 228 Neb. 55, 421 N.W.2d 32 (1988).

Where a reasonable controversy exists between the parties as to the payment of workers' compensation, which is a fact question, an injured employee is not entitled to the statutory penalties for waiting time. *McGee v. Panhandle Technical Sys.*, 223 Neb. 56, 387 N.W.2d 709 (1986).

The right to tax attorney fees is purely statutory, and where a reasonable controversy exists between the parties as to the payment of compensation, an injured employee is not entitled to the statutory penalties for waiting time. *Savage v. Hensel Phelps Constr. Co.*, 208 Neb. 676, 305 N.W.2d 375 (1981).

The provision of this section providing added amount for waiting time does not impose a penalty to an individual within prohibition of Article VII, section 5, of the Constitution. *University of Nebraska at Omaha v. Paustian*, 190 Neb. 840, 212 N.W.2d 704 (1973).

Penalty for delinquent payments not allowable where delay is due to a reasonable controversy as to amount and number of payments and litigation required to determine limitation. *Marshall v. Columbus Steel Supply*, 187 Neb. 102, 187 N.W.2d 607 (1971).

Waiting time begins to run when employer receives notice of disability, not when notice given to carrier. *Gill v. Hrupek*, 184 Neb. 436, 168 N.W.2d 377 (1969).

Penalty for waiting time should not be allowed where reasonable controversy exists. *Wheeler v. Northwestern Metal Co.*, 175 Neb. 841, 124 N.W.2d 377 (1963).

Where defense made raised a question of law of first impression, waiting time penalty was not appropriate. *Hauff v. Kimball*, 163 Neb. 55, 77 N.W.2d 683 (1956).

Where reasonable controversy exists, imposition of penalty for waiting time is not authorized. *Faulhaber v. Roberts Dairy Co.*, 147 Neb. 631, 24 N.W.2d 571 (1946).

Where reasonable controversy exists between an employer and an employee as to employer's liability, employer is not liable for penalty for waiting time or for allowance of attorney's fees. *Redfern v. Safeway Stores, Inc.*, 145 Neb. 288, 16 N.W.2d 196 (1944).

Where contentions of employer present a reasonable controversy, penalty for waiting time will not be allowed, although a reasonable attorney's fee should be allowed for appellate services where award is affirmed. *Dobesh v. Associated Asphalt Contractors, Inc.*, 138 Neb. 117, 292 N.W. 59 (1940).

Where a reasonable controversy exists, employer is not liable for penalty for waiting time during the time the cause is pending in the courts for final determination. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

If there is a reasonable controversy over the liability of employer for compensation, he is not liable for the penalty for waiting time. *Hiestand v. Ristau*, 135 Neb. 881, 284 N.W. 756 (1939).

Penalty is recoverable, where no reasonable controversy exists, and employer withholds periodic payment. *Lincoln Gas & Electric Light Co. v. Watkins*, 113 Neb. 619, 204 N.W. 391 (1925); *Western Newspaper Union v. Dee*, 108 Neb. 303, 187 N.W. 919 (1922); *Abel Const. Co. v. Goodman*, 105 Neb. 700, 181 N.W. 713 (1921).

Penalty is not recoverable, where reasonable controversy exists, until employer's obligation is definitely ascertained or settled, in exercise of proper diligence on his part. *McGuire v. Phelan-Shirley Co.*, 111 Neb. 609, 197 N.W. 615 (1924); *McCrary v. Wolff*, 109 Neb. 796, 192 N.W. 237 (1923); *Hall v. Germantown State Bank*, 105 Neb. 709, 181 N.W. 609 (1921); *Osborn v. Omaha Structural Steel Co.*, 105 Neb. 216, 179 N.W. 1022 (1920); *Updike Grain Co. v. Swanson*, 104 Neb. 661, 178 N.W. 618 (1920).

Penalty provision is constitutional and does not violate due process. *United States Fidelity & Guaranty Co. v. Wickline*, 103 Neb. 21, 170 N.W. 193 (1918).

Subsection (1) of this section requiring that payments be sent directly to the person entitled to compensation within 30 days of the award and imposing waiting-time penalties if the statute is violated is applicable to orders approving lump-sum settlements. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

When a workers' compensation settlement check is sent from an insurance carrier to the employer's counsel, but not to the claimant or his or her counsel, within 30 days after the entry of the award, it is not sent directly to the claimant within the statutorily prescribed time, as would warrant the imposition of waiting-time penalties. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

Workers' compensation payment sent directly to the claimant's counsel within 30 days after the entry of the award is in compliance with the section requiring that payments be sent directly to the person entitled to compensation within 30 days of the award and imposing waiting-time penalties if the statute is violated. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

Workers' compensation statute requiring that payments be sent directly to the person entitled to compensation within 30 days of the award does not include any requirement that there be actual prejudice suffered by the claimant before waiting-time penalties are appropriate. *Harris v. Iowa Tanklines*, 20 Neb. App. 513, 825 N.W.2d 457 (2013).

Where there is no reasonable controversy, this section authorizes the award of attorney fees. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

A 50-percent waiting-time penalty cannot be awarded on the basis of an award of delinquent medical payments; a waiting-time penalty is available only on awards of delinquent payments of disability or indemnity benefits. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

The purpose of the 30-day waiting-time penalty and the provision for attorney fees, as provided in this section, is to encourage prompt payment by making delay costly if the award has been finally established. *Milliken v. Premier Indus.*, 13 Neb. App. 330, 691 N.W.2d 855 (2005).

5. Miscellaneous

Interest may be assessed only when attorney fees are allowed. *VanKirk v. Central Community College*, 285 Neb. 231, 826 N.W.2d 277 (2013).

The prohibition against assessing attorney fees against medical providers set forth in the last sentence of subdivision (2)(a) of this section cannot be avoided by instead filing an action in the district court seeking fees under the common fund doctrine. *Walentine, O'Toole v. Midwest Neurosurgery*, 285 Neb. 80, 825 N.W.2d 425 (2013).

A workers' compensation trial judge has continuing jurisdiction to enforce an employer's obligation to pay benefits pending the employer's appeal of the judge's previous order imposing a penalty and costs for a delayed payment. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

An employer's appeal from a postjudgment proceeding to enforce a workers' compensation award does not disturb the finality of an award imposing a continuing obligation on the employer to pay benefits. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

Preaward interest, as assessed by an enforcement order in a workers' compensation proceeding, is not a penalty but a means of fully compensating the claimant for not having use of the money that the employer owed. *Russell v. Kerry, Inc.*, 278 Neb. 981, 775 N.W.2d 420 (2009).

When an employer appeals a benefits award, it will not be excused from paying compensation 30 days following the date of the award unless the employer has an actual basis in law or fact for disputing the award. *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

Under former law, "such payments" contained in the second sentence of subsection (1) of this section refers to all "amounts of compensation" provided for in the first sentence of said subsection. *Brown v. Harbor Fin. Mortgage Corp.*, 267 Neb. 218, 673 N.W.2d 35 (2004).

Pursuant to subsection (1) of this section, the award of attorney fees pursuant to this section must be calculated on a case-by-case basis, and particular attention should be given to the amount of legal work performed in relation to the amount of the unpaid medical bill and the amount of the unpaid medical bill in relation to the workers' compensation award received. *Harmon v. Irby Constr. Co.*, 258 Neb. 420, 604 N.W.2d 813 (1999).

The filing of a cross-appeal by an employer constitutes the filing of an appeal within the meaning of this section. An award of attorney fees pursuant to section 25-824(2) may eliminate any prejudice in not awarding attorney fees pursuant to this section. *U.S. West Communications, Inc. v. Taborski*, 253 Neb. 770, 572 N.W.2d 81 (1998).

"Compensation," used in subsection (1) of this section in reference to additional sums for waiting time, an attorney fee, and interest, means periodic disability or indemnity benefits payable on account of the employee's work-related injury or death. When a court awards attorney fees against an employer pursuant to subsection (1) of this section, the employer shall be liable for interest pursuant to subsection (2). *Koterzina v. Copple Chevrolet*, 249 Neb. 158, 542 N.W.2d 696 (1996).

The employer's liability for interest exists, and execution for interest may issue, even when the judgment is silent as to interest. *Sherard v. State*, 244 Neb. 743, 509 N.W.2d 194 (1993).

This section applies to final adjudicated awards. The award in this case was not final, and the penalty did not commence to run until 30 days after the mandate of the Supreme Court had been filed in the compensation court. *Leitz v. Roberts Dairy*, 239 Neb. 907, 479 N.W.2d 464 (1992).

When a workers' compensation case is remanded for a rehearing on an issue as to which this court has determined that a proper rehearing has not been held, the hearing held after remand is a rehearing in which expenses and attorney fees may be awarded pursuant to this section. *Snyder v. IBP, Inc.*, 235 Neb. 319, 455 N.W.2d 157 (1990).

"Compensation", used in subsection (1) of this section in reference to additional sums for waiting time, an attorney fee, and interest, means periodic disability or indemnity benefits payable on account of the employee's work-related injury or death. *Bituminous Casualty Corp. v. Deyle*, 234 Neb. 537, 451 N.W.2d 910 (1990).

Ordinarily, the term "reduction in the amount of such award" refers to the total amount of the award to the employee. However, the "amount of such award" includes the issue of total disability. *Behrens v. American Stores Packing Co.*, 228 Neb. 18, 421 N.W.2d 12 (1988).

A workmen's compensation insurance carrier for an employer should be deemed to be an employer within the meaning of this section. *Neeman v. Otoe County*, 186 Neb. 370, 183 N.W.2d 269 (1971).

An agreement to pay compensation must be approved by a compensation commissioner or compensation court or it is void, and part payment does not make such agreement actionable at common law. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

An award of attorney fees is a prerequisite before interest on the compensation amount due to a claimant may be awarded under this section. *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006).

48-125.01 Compensation; penalties for attempted avoidance of payment.

Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer, after one of his or her employees has been injured within the purview of the Nebraska Workers' Compensation Act, and with intent to avoid the payment of compensation under such act to such employee or his or her dependents, shall be guilty of a Class I misdemeanor. In any case when such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I misdemeanor as well as jointly and severally liable with such corporation for any fine imposed upon the corporation. In any case when such employer is a limited liability company, any member or manager thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I

misdeemeanor as well as jointly and severally liable with such limited liability company for any fine imposed upon the limited liability company. In any case when such employer is a limited partnership or a limited liability partnership, any general partner, if knowingly participating or acquiescing in the act with intent to avoid the payment under the Nebraska Workers' Compensation Act, shall also be guilty of a Class I misdemeanor as well as jointly and severally liable with such limited partnership or limited liability partnership, and limited partners shall not be liable.

Source: Laws 1971, LB 572, § 20; Laws 1977, LB 40, § 270; Laws 1986, LB 811, § 44; Laws 1994, LB 884, § 64; Laws 2003, LB 210, § 2.

48-125.02 State employee claim; Prompt Payment Act applicable; other claims; processing of claim; requirements; failure to pay; effect; presumption of payment.

(1) Regarding payment of a claim for medical, surgical, or hospital services for a state employee under the Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

(2) For claims other than claims under subsection (1) of this section regarding payment of a claim for medical, surgical, or hospital services for an employee under the Nebraska Workers' Compensation Act:

(a) The workers' compensation insurer, risk management pool, or self-insured employer shall notify the provider within fifteen business days after receiving a claim as to what information is necessary to process the claim. Failure to notify the provider assumes the workers' compensation insurer, risk management pool, or self-insured employer has all information necessary to pay the claim. The workers' compensation insurer, risk management pool, or self-insured employer shall pay providers in accordance with sections 48-120 and 48-120.04 within thirty business days after receipt of all information necessary to process the claim. Failure to pay the provider within the thirty days will cause the workers' compensation insurer, risk management pool, or self-insured employer to reimburse the provider's billed charges instead of the scheduled or contracted fees;

(b) If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the workers' compensation insurer, risk management pool, or self-insured employer or its clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all; and

(c) Payment of a claim by the workers' compensation insurer, risk management pool, or self-insured employer means the receipt of funds by the provider. If payment is submitted electronically, the payment is presumed to have been received on the date of the electronic verification of receipt by the provider or the provider's clearinghouse. If payment is submitted by mail, the payment is presumed to have been received five business days after the payment has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the payment was received on another day or not received at all.

Source: Laws 2007, LB588, § 3.

Cross References

Prompt Payment Act, see section 81-2401.

48-126 Wages, defined; calculation.

Wherever in the Nebraska Workers' Compensation Act the term wages is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident. It shall not include gratuities received from the employer or others, nor shall it include board, lodging, or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring, except that if the workers' compensation insurer shall have collected a premium based upon the value of such board, lodging, and similar advantages, then the value thereof shall become a part of the basis of determining compensation benefits. In occupations involving seasonal employment or employment dependent upon the weather, the employee's weekly wages shall be taken to be one-fiftieth of the total wages which he or she has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not fairly represent the earnings of the employee. In such a case, the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his or her average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour or by the output of the employee, his or her weekly wages shall be taken to be his or her average weekly income for the period of time ordinarily constituting his or her week's work, and using as the basis of calculation his or her earnings during as much of the preceding six months as he or she worked for the same employer, except as provided in sections 48-121 and 48-122. The calculation shall also be made with reference to the average earnings for a working day of ordinary length and exclusive of earnings from overtime, except that if the insurance company's policy of insurance provides for the collection of a premium based upon such overtime, then such overtime shall become a part of the basis of determining compensation benefits.

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. 17; 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(1), p. 512; Laws 1957, c. 204, § 3, p. 721; Laws 1986, LB 811, § 45; Laws 2005, LB 238, § 5.

1. Seasonal employment
2. Continuous employment
3. Board and lodging
4. Miscellaneous

1. Seasonal employment

Seasonal employment refers to occupations which can be carried on only at certain seasons or fairly definite portions of the year, and does not include such occupations as may be carried on through the entire year. *Hiestand v. Ristau*, 135 Neb. 881, 284 N.W. 756 (1939).

Employment for handling and delivery of coal for retail coal dealer was not seasonal employment. *Hogsett v. Cinek Coal & Feed Co.*, 127 Neb. 393, 255 N.W. 546 (1934).

Seasonal refers to occupation ordinarily performed in certain seasons. *Lincoln Gas & Electric Light Co. v. Watkins*, 113 Neb. 619, 204 N.W. 391 (1925).

Work of caretaker of club house was not seasonal. *Dietz Club v. Niehaus*, 110 Neb. 154, 193 N.W. 344 (1923).

2. Continuous employment

Deceased was not engaged in continuous employment where he was a truck driver hired on a per trip basis and employer was under no obligation to rehire deceased after each trip. *Loeffelholz v. Allied Mut. Ins. Co.*, 183 Neb. 112, 158 N.W.2d 219 (1968).

Employment was continuous where employee was hired to work one day each week. *Newberry v. Youngs*, 163 Neb. 397, 80 N.W.2d 165 (1956).

Bridge building is not seasonal employment. *Gorham v. Peter Kiewit Sons Co.*, 129 Neb. 277, 261 N.W. 353 (1935).

Where employee had been employed for a period of several months on the basis of a weekly salary, and shortly before accident his salary was changed from a weekly to hourly basis, rule of continuous employment should be applied. *Mutchie v. M. L. Rawlings Ice Co.*, 122 Neb. 297, 240 N.W. 267 (1932).

3. Board and lodging

Allowance for board and lodging must represent a reasonably definite economic gain to the employee before it can be considered as wages. *Solheim v. Hastings Housing Co.*, 151 Neb. 264, 37 N.W.2d 212 (1949).

Where money value of board, lodging, and washing furnished to employee is fixed at time of hiring, it is considered as part of wages in determining amount of compensation due. *City of Omaha v. Casaubon*, 138 Neb. 608, 294 N.W. 389 (1940).

Cost of meals and lodging furnished employee by employer under agreement made at time of hiring was part of such employee's wages hereunder. *Maryland Casualty Co. v. Geary*, 123 Neb. 851, 244 N.W. 797 (1932).

4. Miscellaneous

Net profits or net income of a subchapter S corporation do not necessarily qualify as "wages." *Bortolotti v. Universal Terrazzo & Tile Co.*, 304 Neb. 219, 933 N.W.2d 851 (2019).

The determination of "wages" for an employee-shareholder of a subchapter S corporation is a fact-specific inquiry. *Bortolotti v. Universal Terrazzo & Tile Co.*, 304 Neb. 219, 933 N.W.2d 851 (2019).

"Wages" do not include payments received solely because of the recipient's status as an S corporation shareholder; rather, "wages" are compensation for the recipient's activities as a corporate employee. *Bortolotti v. Universal Terrazzo & Tile Co.*, 304 Neb. 219, 933 N.W.2d 851 (2019).

When an employee paid by the hour suffers a work-related injury that results in permanent injury or death, the employee's average weekly wage is calculated by multiplying the rate of wages by a 40-hour workweek rather than by averaging that employee's actual wages over the 6 months before the accident. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

The language "ordinarily constituting his or her week's work" precludes an automatic mathematical calculation based on the past 6 months' work; the goal of any average income test is to produce an honest approximation of the claimant's probable future earning capacity. *Mueller v. Lincoln Public Schools*, 282 Neb. 25, 803 N.W.2d 408 (2011).

Where the worker has insufficient work history to be able to calculate his or her average weekly income based on as much of the preceding 6 months as he or she worked for the same employer, then what would ordinarily constitute that employee's week's work and, thus, that employee's average weekly income should, if possible, be estimated by considering the preceding 6 months of other employees working similar jobs for similar employers. *Powell v. Estate Gardeners*, 275 Neb. 287, 745 N.W.2d 917 (2008).

In determining the average weekly wage, those weeks which are abnormal may be excluded from the 26 weeks preceding the accident. *Canas v. Maryland Cas. Co.*, 236 Neb. 164, 459 N.W.2d 533 (1990).

Money amounts negotiated between a union and employers based on hours worked by union member employees and to be paid directly to the union to cover such things as health and welfare and pensions are not to be included within the term "wages," unless the money value of such advantages to the employee has been agreed upon and fixed by the employer and

employee at the time of hiring. *Briggs v. Consolidated Freightways*, 234 Neb. 410, 451 N.W.2d 278 (1990).

Money amounts negotiated between a union and employer based on hours worked by union member employees and to be paid directly to the union to cover such things as health and welfare and pensions are not to be included within the term wages, unless the money value of such advantages to the employee has been agreed upon and fixed by the employer and employee at the time of hiring. *Schlotfeld v. Mel's Heating & Air Conditioning*, 233 Neb. 488, 445 N.W.2d 918 (1989).

Where decedent is unable to work for employer during the six months preceding his death, his wages are calculated by his earnings during as much of the last six months that he worked. *Clifford v. Harchelroad Chevrolet*, 229 Neb. 78, 425 N.W.2d 331 (1988).

Wages are to be computed according to the contract of hire in force at the time of the accident. *Hayes v. A.M. Cohron, Inc.*, 224 Neb. 579, 400 N.W.2d 244 (1987).

Base figure in calculating award is the wage in force at the time of the accident. *Chadd v. Western Cas. & Sur. Co.*, 166 Neb. 483, 89 N.W.2d 586 (1958).

Employee hired for a day at a time six or seven times a month was entitled to have compensation based on the money rate at which service was recompensed. *Gruber v. Stickelman*, 149 Neb. 627, 31 N.W.2d 753 (1948).

Wages under the Workmen's Compensation Act are to be computed according to the terms of the contract of hiring in force at the time of the accident. *Redfern v. Safeway Stores, Inc.*, 145 Neb. 288, 16 N.W.2d 196 (1944).

Where employment is not continuous, calculation of wages should be made at the money rate at which the service rendered is recompensed. *Weitz v. Johnson*, 143 Neb. 452, 9 N.W.2d 788 (1943).

Where employment is not seasonal and not continuous, compensation must be based upon the contract of hiring in force at the time of the accident. *Cole v. M. L. Rawlings Ice Co.*, 139 Neb. 439, 297 N.W. 652 (1941).

Term wages is construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, where employment is neither seasonal nor continuous. *Carlson v. Condon-Kiewit Co.*, 135 Neb. 587, 283 N.W. 220 (1939).

Receipt and acceptance of workmen's compensation by city fireman does not bar him from receiving fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Wages should be computed ordinarily according to the terms of contract of hiring in force at the time of the accident. *Drum v. Omaha Steel Works*, 129 Neb. 273, 261 N.W. 351 (1935).

Compensation claimant's employment was not continuous, or seasonal, or dependent upon the weather, and, therefore, first sentence of this section governs wages. *Davis v. Lincoln County*, 117 Neb. 148, 219 N.W. 899 (1928).

In this section, the Legislature dealt with the possible inequity that could result from abnormally high work weeks in the context of average weekly wage calculations. *Arbtin v. Puritan Mfg. Co.*, 13 Neb. App. 540, 696 N.W.2d 905 (2005).

Payments to an employee are included in an employee's wage if the payments do not constitute actual reimbursement for actual incurred expenses, but, rather, represent real and definite economic gain to the employee. *McGinnis v. Metro Package Courier, Inc.*, 5 Neb. App. 538, 561 N.W.2d 587 (1997).

Employer may not reduce average weekly wage by amount of "road allowance" included in wages unless such allowance was agreed upon at the time of hiring and did not represent a real and reasonably definite economic gain to the employee. *Logan v. Rocky Mountain Rental*, 3 Neb. App. 173, 524 N.W.2d 816 (1994).

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.

48-127 Compensation; willful negligence; intoxication; effect.

If the employee is injured by reason of his or her intentional willful negligence, or by reason of being in a state of intoxication, neither he or she nor his or her beneficiaries shall receive any compensation under the Nebraska Workers' Compensation Act.

Source: Laws 1913, c. 198, § 27, p. 592; R.S.1913, § 3668; C.S.1922, § 3050; C.S.1929, § 48-127; R.S.1943, § 48-127; Laws 1986, LB 811, § 46.

Whether or not effected by this section, employee's acceptance of benefits under Workmen's Compensation Act ordinarily constitutes release to employer of claims at law arising from the injury. *Edelman v. Ralph Printing & Lithographing, Inc.*, 189 Neb. 763, 205 N.W.2d 340 (1973).

The burden of proving intoxication as a defense is on the employer. *Johnson v. Hahn Bros. Constr. Inc.*, 188 Neb. 252, 196 N.W.2d 109 (1972).

Deviation from authorized route of travel was not willful negligence. *Krajieski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Participant in fight was not willfully negligent. *Myszkowski v. Wilson & Co., Inc.*, 155 Neb. 714, 53 N.W.2d 203 (1952).

Moving of well-digging machinery so as to come in contact with electric power line was not willful negligence. *Schroeder v. Sharp*, 153 Neb. 73, 43 N.W.2d 572 (1950).

Willful, as used in this section, means deliberate act; conduct evidencing reckless indifference to safety; more than want of ordinary care. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Disobedience of order not to smoke did not constitute willful negligence. *Moise v. Fruit Dispatch Co.*, 135 Neb. 684, 283 N.W. 495 (1939).

Where defense is willful negligence, any competent evidence tending to show knowledge by employee of the dangerous character of the act which subsequently caused his death should be received, and it was error to exclude testimony of witness that he had warned deceased of his danger. *Richards v. Abts*, 135 Neb. 347, 281 N.W. 611 (1938).

In view of holding that accident by which employee met his death did not arise out of his employment, question of his willful negligence, though doubtful, was not decided. *Feda v. Cudahy Packing Co.*, 102 Neb. 110, 166 N.W. 190 (1918).

48-128 Compensation; injury increasing disability; second injury; additional compensation; claim.

(1) For injuries occurring before December 1, 1997:

(a) If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his or her obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. For the additional disability, the employee shall be compensated out of the Workers' Compensation Trust Fund. If the subsequent compensable injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent partial disability, the employer shall pay the compensation benefits prescribed by this subsection for a period not exceeding three hundred twenty-five weeks, and for any compensation benefits payable after such period of three hundred twenty-five weeks, the dependents shall be compensated out of the fund.

(b) In order to qualify under this subsection, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge.

(c) As used in this subsection, preexisting permanent partial disability shall mean any preexisting permanent condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this subsection unless it would support a rating of twenty-five percent loss of earning power or more or support a rating which would result in compensation payable for a period of ninety weeks or more for disability for permanent injury as computed under subdivision (3) of section 48-121.

(2) Any money in the Second Injury Fund on July 1, 2000, shall be transferred to the Workers' Compensation Trust Fund.

Source: Laws 1913, c. 198, § 28, p. 592; R.S.1913, § 3669; C.S.1922, § 3051; C.S.1929, § 48-128; R.S.1943, § 48-128; Laws 1947, c. 174, § 1, p. 559; Laws 1949, c. 161, § 2, p. 411; Laws 1955, c. 185, § 1, p. 525; Laws 1955, c. 186, § 4, p. 532; Laws 1967, c. 290, § 1, p. 792; Laws 1971, LB 505, § 1; Laws 1974, LB 881, § 1; Laws 1986, LB 811, § 47; Laws 1986, LB 1037, § 1; Laws 1987, LB 398, § 41; Laws 1988, LB 1034, § 1; Laws 1992, LB 1006, § 92; Laws 1993, LB 757, § 8; Laws 1997, LB 854, § 2; Laws 2000, LB 1221, § 6.

Generally, Nebraska applies the full-responsibility rule and does not apportion the recovery for two or more successive work-related injuries outside of this section. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

In order for the employer to qualify under subsection (1)(b) of this section, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of the written records requirement of this section is to put in place a strictly limited method of proving a predicate fact before liability for benefits may be shifted to the Workers' Compensation Trust Fund. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The purpose of this section is to provide employers with an incentive to hire those who suffer from permanent disability, but the statute restricts the benefits to those employers who consciously hire those they know to be suffering from prior permanent disabilities. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

The written records requirement of this section is merely evidentiary, and must be sensibly construed so as not to defeat the statute's larger remedial purpose. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

This section does not require possession of the written records by the employer at the time of the subsequent injury or at the time the claim for contribution from the Workers' Compensation Trust Fund is made. *Ashland-Greenwood Public Schools v. Thorell*, 15 Neb. App. 114, 723 N.W.2d 506 (2006).

48-129 Compensation; joint employers; liability.

In case any employee for whose injury or death compensation is payable under the Nebraska Workers' Compensation Act shall, at the time of the injury, be employed and paid jointly by two or more employers, as defined in section 48-114, such employers shall contribute to the payment of such compensation in proportion to their several wage liabilities to such employee. If one or more, but not all, of such employers should be subject to the Nebraska Workers' Compensation Act, then the liability of such of them as are so subject shall be to pay that proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employee, except that nothing in this

section shall prevent employers from making any arrangement between themselves for a different distribution of the ultimate burden of compensation.

Source: Laws 1913, c. 198, § 29, p. 592; R.S.1913, § 3670; C.S.1922, § 3052; C.S.1929, § 48-129; R.S.1943, § 48-129; Laws 1986, LB 811, § 48.

Under the facts of this case, the claimant was a loaned employee but there was no consensual relationship sufficient to create a new employer-employee relationship. Therefore, the lending employer remained liable for his workmen's compensation. *B & C Excavating Co. v. Hiner*, 207 Neb. 248, 298 N.W.2d 155 (1980).

Sections 48-129 and 48-168, R.R.S.1943, gives the Workmen's Compensation Court jurisdiction to consider the issue of joint employment. *White v. Western Commodities, Inc.*, 207 Neb. 75, 295 N.W.2d 704 (1980).

Under the facts of this case, the Workmen's Compensation Court was clearly wrong in finding that the two defendants were joint employers of the plaintiff but was correct in finding an employer-employee relationship between one of the defendants and the plaintiff. *White v. Western Commodities, Inc.*, 207 Neb. 75, 295 N.W.2d 704 (1980).

Joint employment and pro rata liability for compensation payments under this section exist only where there is an agreement between employers as to salary, wages, hours of employment, and terms of service. *Henning v. City of Hebron*, 186 Neb. 381, 183 N.W.2d 756 (1971).

In absence of joint arrangement, there cannot be any joint employment. *Solheim v. Hastings Housing Co.*, 151 Neb. 264, 37 N.W.2d 212 (1949).

Joint employer is required to pay only that proportion of compensation which his proportionate wage bears to entire wages of employee. *Summers v. Railway Express Agency*, 134 Neb. 237, 278 N.W. 476 (1938).

To constitute joint employment, there must be concert of action between employers as to wages, hours of service, and term of service. *Suverkrubbe v. Village of Fort Calhoun*, 127 Neb. 472, 256 N.W. 47 (1934).

48-130 Compensation; savings; insurance; other benefits; not factors.

No savings or insurance of the injured employee or any contribution made by him or her to any benefit fund or protective association independent of the Nebraska Workers' Compensation Act shall be taken into consideration in determining the compensation to be paid thereunder; nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided be considered in fixing compensation under such act.

Source: Laws 1913, c. 198, § 30, p. 593; R.S.1913, § 3671; C.S.1922, § 3053; C.S.1929, § 48-130; R.S.1943, § 48-130; Laws 1986, LB 811, § 49.

Pursuant to this section, the payment of private insurance benefits does not entitle an employer to reduce an employee's benefits due under the Nebraska Workers' Compensation Act. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

Pension benefits made under city ordinance did not affect the right of plaintiff to claim and receive under Workmen's Compensation Act. *Novotny v. City of Omaha*, 207 Neb. 535, 299 N.W.2d 757 (1980).

Receipt of workmen's compensation does not bar city fireman from right to fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Receipt by city fireman of pension will not bar widow from compensation under Workmen's Compensation Act. *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934).

Question whether pension paid by city to widow of deceased policeman would be benefits derived from any other source, was

discussed, but not decided. *Good v. City of Omaha*, 102 Neb. 654, 168 N.W. 639 (1918).

No provision in the Nebraska Workers' Compensation Act limits an employee's ability to receive workers' compensation benefits because he or she is simultaneously receiving unemployment benefits. *Hernandez v. JBS USA*, 20 Neb. App. 634, 828 N.W.2d 765 (2013).

An employer's exercise of its statutory right to pursue its subrogation claim against a tort-feasor who injured its employee is not "causing" the payment of workers' compensation. *Thomas v. Lincoln Public Schools*, 9 Neb. App. 965, 622 N.W.2d 705 (2001).

Payment of private insurance benefits, even if made pursuant to an employer-funded plan, does not entitle an employer to reduce an employee's benefits due under the Workers' Compensation Act. *Nunn v. Texaco Trading & Transp.*, 3 Neb. App. 101, 523 N.W.2d 705 (1994).

48-131 Compensation; waiver by employee invalid.

No agreement by an employee to waive his or her rights to compensation under the Nebraska Workers' Compensation Act shall be valid.

Source: Laws 1913, c. 198, § 31, p. 593; R.S.1913, § 3672; C.S.1922, § 3054; C.S.1929, § 48-131; R.S.1943, § 48-131; Laws 1986, LB 811, § 50.

On payments of compensation without agreement of settlement, statutory limitations did not take effect until one year

from last payment. *Ashton v. Blue River Power Co.*, 117 Neb. 661, 222 N.W. 42 (1928).

48-132 Compensation; employees or dependents under disability; rights; enforcement.

If an injured employee or a dependent is mentally incompetent or is a minor at the time when any right or privilege accrues to him or her under the Nebraska Workers' Compensation Act, his or her guardian or next friend may, in his or her behalf, claim and exercise such right or privilege.

Source: Laws 1913, c. 198, § 32, p. 593; R.S.1913, § 3673; C.S.1922, § 3055; C.S.1929, § 48-132; R.S.1943, § 48-132; Laws 1961, c. 234, § 1, p. 692; Laws 1986, LB 811, § 51.

Cross References

For definitions of incompetent person and guardian, see section 30-2902.

Failure of guardian to bring action does not bar right of minor from asserting rights after becoming of age. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

The act relating to filing claims for compensation makes no exception in favor of minors. *Ray v. Sanitary Garbage Co.*, 134 Neb. 178, 278 N.W. 139 (1938).

Where claimant knew her condition from day to day, and knew she had a present total disability, she was not excused

from filing claim within time prescribed by statute by continuous confinement to bed as the result of injury. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

Minor employee, of an age where legally permitted to work, may elect to come under Workmen's Compensation Act. *Navracel v. Cudahy Packing Co.*, 109 Neb. 506, 191 N.W. 659 (1922).

48-133 Compensation; notice of injury; time; service.

No proceedings for compensation for an injury under the Nebraska Workers' Compensation Act shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof; *Provided*, that all disputed claims for compensation or benefits shall be first submitted to the Nebraska Workers' Compensation Court. The notice shall be in writing and shall state in ordinary language the time, place, and cause of the injury. It shall be signed by the person injured, or by a person in his or her behalf, or in the event of his or her death, by his or her legal representative or by a person in his or her behalf. The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering the notice to the person on whom it is to be served, or leaving it at his or her residence or place of business, or by sending it by certified or registered mail addressed to the person or corporation on whom it is to be served at his or her last-known residence or place of business. A notice given pursuant to this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under the Nebraska Workers' Compensation Act, if it be shown that the employer had notice or knowledge of the injury.

Source: Laws 1913, c. 198, § 33, p. 593; R.S.1913, § 3674; Laws 1917, c. 85, § 11, p. 209; C.S.1922, § 3056; C.S.1929, § 48-133; Laws 1935, c. 57, § 21, p. 198; C.S.Supp.,1941, § 48-133; R.S.1943, § 48-133; Laws 1961, c. 234, § 2, p. 692; Laws 1977, LB 144, § 1; Laws 1986, LB 811, § 52; Laws 1987, LB 93, § 16.

- 1. Notice of injury
- 2. Claim for compensation
- 3. Miscellaneous

1. Notice of injury

An employee is not required to give an opinion as to the cause of an injury in order to satisfy the notice requirement under this

section. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

Under this section, an employer has sufficient notice or knowledge of a worker's injury if a reasonable person would conclude that the injury is potentially compensable and that the employer should therefore investigate the matter further. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

When an employer's foreman, supervisor, or superintendent has knowledge of the employee's injury, that knowledge is imputed to the employer. Knowledge imputed to an employer can satisfy this section's notice requirement. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

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

A lack of prejudice is not an exception to the requirement of notice under this section. *Scott v. Pepsi Cola Co.*, 249 Neb. 60, 541 N.W.2d 49 (1995).

In place of indispensable written notice, this section contemplates a situation in which an employer has notice or knowledge sufficient to lead a reasonable person to conclude that an employee's injury is potentially compensable and that, therefore, the employer should investigate the matter further. *Thompson v. Monfort of Colorado*, 221 Neb. 83, 375 N.W.2d 601 (1985).

Employee is required to give notice in writing as soon as practicable after the accident. *Seymour v. Journal-Star Printing Co.*, 174 Neb. 150, 116 N.W.2d 297 (1962).

Where employer had actual notice, written notice was not required. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Request for medical services was sufficient notice. *Gilbert v. Metropolitan Utilities Dist.*, 156 Neb. 750, 57 N.W.2d 770 (1953).

Where employee, with full knowledge of his injury, fails to file notice of claim within six months after injury, his claim is barred. *Surratt v. Otoe Food Products Co.*, 146 Neb. 854, 21 N.W.2d 862 (1946).

Lack of written notice to employer is not bar to proceedings if employer has notice or knowledge of the injury. *Perkins v. Young*, 133 Neb. 234, 274 N.W. 596 (1937).

Timely notice to or knowledge of a foreman, whose duty requires him to report accidents to his employer, is sufficient. *Clary v. R. S. Proudfit Co.*, 124 Neb. 582, 247 N.W. 417 (1933).

Employee's failure to give timely notice of claim is not necessarily defense where injury is latent and progressive, and notice is given within six months from time he has knowledge of compensable disability. *Flesch v. Phillips Petroleum Co.*, 124 Neb. 1, 244 N.W. 925 (1932).

Verbal notice to physician of employer, indirectly threatening suit, is not such notice as complies herewith. *Samland v. Ford Motor Co.*, 123 Neb. 819, 244 N.W. 404 (1932).

Written notice to employer is not necessary where he had actual notice of employee's injury. *Skelly Oil Co. v. Gaugenbaugh*, 119 Neb. 698, 230 N.W. 688 (1930).

For purposes of notice or knowledge under this section, the employer equates to the insurer, and vice versa. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

Knowledge of an employee's injury gained by the employee's foreman, supervisor, or superintendent in a representative capacity for an employer is knowledge imputed to the employer and notice to an employer sufficient for the notice requirement of this section. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

This section provides an exception to the written notice rule if it can be shown that the employer had notice or knowledge of the injury sufficient to lead a reasonable person to conclude that an employee's injury is potentially compensable, which in turn would create a responsibility of the employer to investigate the matter. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

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

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

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

2. Claim for compensation

Where an occupational disease results from continual absorption of small quantities of a deleterious substance from the employment environment over a period of time, the afflicted employee is considered "injured" only when the accumulated effects of the substance manifest themselves, which is when the employee becomes disabled and entitled to compensation. The statute of limitations runs from the date when the disability first occurred. *Osteen v. A.C. and S., Inc.*, 209 Neb. 282, 307 N.W.2d 514 (1981).

A claim made within six months after occurrence of disability is a condition prerequisite to the bringing of action for compensation benefits. *Raymond v. Buckridge, Inc.*, 195 Neb. 212, 237 N.W.2d 412 (1976).

Furnishing by employer of medical services and medicines dispenses with necessity of making claim within six months after injury. *Gourley v. City of Grand Island*, 168 Neb. 538, 96 N.W.2d 309 (1959).

Where employee failed to establish connection between accident and disability, consideration of question of failure to file claim in time was unnecessary. *Cole v. Cushman Motor Works*, 159 Neb. 97, 65 N.W.2d 330 (1954).

Where time for filing of claim expires in lifetime of employee, it is a bar to claim by his dependents after his death. *McCoy v. Gooch Milling & Elevator Co.*, 156 Neb. 95, 54 N.W.2d 373 (1952).

Where employee has made claim within six months against employer, he is not required to make separate claim against third party who failed to require employer to carry insurance. *Dobesh v. Associated Asphalt Contractors, Inc.*, 138 Neb. 117, 292 N.W. 59 (1940).

A demand for payment of medical expenses under the compensation act is a claim for compensation. *Schmidt v. City of Lincoln*, 137 Neb. 546, 290 N.W. 250 (1940).

Minor dependents of deceased employee are not excepted from provisions of statute as to time for filing claims. *Ray v. Sanitary Garbage Co.*, 134 Neb. 178, 278 N.W. 139 (1938).

Failure to comply with statutory requirements as to filing claim precludes recovery. *Johansen v. Farmers Mutual Hail Ins. Assn.*, 133 Neb. 118, 274 N.W. 393 (1937).

In case of physical or mental incapacity resulting from injury, the statutory limitations as to notice and commencement of action do not begin to run until six months after removal of such incapacity. *Mulvey v. City of Lincoln*, 131 Neb. 279, 267 N.W. 459 (1936).

Exception is made in case of latent and progressive injury, and claim must be made within six months after employee acquired knowledge of disability. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

Claim must be made within six months and petition filed within one year of death of employee. *Welton v. Swift & Co.*, 125 Neb. 455, 250 N.W. 661 (1933).

Where claimant was informed by his doctor of progressive cataracts forming in the lenses of both eyes, he was not excused from filing claim on the ground that condition was latent. *Kurtz v. Sunderlund Bros. Co.*, 124 Neb. 776, 248 N.W. 84 (1933).

Where claim is made within six months of time real nature of injury was first discovered, it was timely made. *Clary v. R. S. Proudfit Co.*, 124 Neb. 582, 247 N.W. 417 (1933).

Where claim for compensation was made within six months from time real nature of injury was first discovered by use of X-rays, it was timely made. *Montgomery v. Milldale Farm & Live Stock Improvement Co.*, 124 Neb. 347, 246 N.W. 734 (1933).

Where injury is latent and of progressive nature and culminates in a compensable disability, claim may be filed within a year after date of culmination thereof. *Marler v. Grainger Bros.*, 123 Neb. 517, 243 N.W. 622 (1932).

Failure to file claim or bring suit within specified time does not defeat right to compensation where injury is latent and notice has been given and action commenced within statutory period after employee has knowledge of such compensable injury. *Astuto v. V. Ray Gould Co.*, 123 Neb. 138, 242 N.W. 375 (1932).

Recovery is not barred where employee makes claim of employer within two months after injury and lodges claim with commissioner within seven months thereof. *Palmer v. Saunders County*, 117 Neb. 484, 221 N.W. 99 (1928).

Latent injuries, progressive in nature, entitle employee to compensation when disability is discovered to exist and, in such cases, failure to make claim within six months after the accident will not deprive employee of rights. *McGuire v. Phelan-Shirley Co.*, 111 Neb. 609, 197 N.W. 615 (1924); *Selders v. Cornhusker*

Oil Co., 111 Neb. 300, 196 N.W. 316 (1923); *Johansen v. Union Stock Yards Co.*, 99 Neb. 328, 156 N.W. 511 (1916).

Knowledge of employer that employee has received an injury will not dispense with necessity of making claim for compensation. *Good v. City of Omaha*, 102 Neb. 654, 168 N.W. 639 (1918).

Time for bringing of proceeding begins to run from the time physical or mental incapacity is removed. *Simon v. Cathroe Co.*, 101 Neb. 211, 162 N.W. 633 (1917).

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

3. Miscellaneous

Agreement to pay compensation must be approved by compensation commissioner or compensation court or it is void, and part payment will not make such agreement actionable at common law. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

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

(d) EXAMINATION AND VERIFICATION OF INJURY

48-134 Injured employee; physical examination; duty to submit.

After an employee has given notice of an injury, as provided in section 48-133, and from time to time thereafter during the continuance of his or her disability, he or she shall, if so requested by the employer or the insurance company carrying such risk, submit himself or herself to an examination by a physician or surgeon legally authorized to practice medicine under the laws of the state in which he or she practices, furnished and paid for by the employer, or the insurance company carrying such risk, as the case may be. The employee shall have the right to have a physician provided and paid for by himself or herself present at the examination. The unreasonable refusal of the employee to submit to such examination shall deprive him or her of the right to compensation under the Nebraska Workers' Compensation Act during the continuance of such refusal, and the period of such refusal shall be deducted from the period during which compensation would otherwise be payable.

Source: Laws 1913, c. 198, § 34, p. 594; R.S.1913, § 3675; C.S.1922, § 3057; C.S.1929, § 48-134; R.S.1943, § 48-134; Laws 1969, c. 395, § 1, p. 1385; Laws 1986, LB 811, § 53.

This section places the selection of the physician solely within the employer's or insurance company's discretion, so long as the physician is legally authorized as set out in this section. *Behrens v. American Stores Packing Co.*, 234 Neb. 25, 449 N.W.2d 197 (1989).

Inquiry respecting extent of an injury to employee should be directed to his condition at time of examination or trial. *Dymak v. Haskins Bros. & Co.*, 132 Neb. 308, 271 N.W. 860 (1937).

Woman employee refusing to permit injection to render kidney opaque for purpose of X-ray photograph, was not thereby

deprived of right to compensation. *United States Fidelity & Guaranty Co. v. Wickline*, 103 Neb. 681, 173 N.W. 689 (1919), 103 Neb. 21, 170 N.W. 193, 6 A.L.R. 1267 (1918).

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

48-134.01 Independent medical examiner system; list of physicians; duties; fee schedule; selection of examiner; procedures before examiner; findings; immunity.

(1) The Nebraska Workers' Compensation Court may develop and implement an independent medical examiner system consistent with the requirements of this section. As part of such system, the compensation court by a majority vote of the judges thereof may create, maintain, and periodically validate a list of physicians that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the compensation court finds most commonly used by injured employees. The compensation court may establish a fee schedule for services rendered by independent medical examiners and may adopt and promulgate any rules and regulations considered necessary to carry out the purposes of this section.

(2) An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner shall not be the employee's treating physician and shall not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid.

(3) If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the compensation court shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant and related issues, including, but not limited to, whether the injured employee is able to perform any gainful employment temporarily or permanently, what physical restrictions, if any, would be imposed on the employee's employment, whether the injured employee has reached maximum medical improvement, the existence and extent of any permanent physical impairment, the reasonableness and necessity of any medical treatment previously provided, or to be provided, to the injured employee, and any other medical questions which may pertain to causality and relatedness of the medical condition to the employment.

(4) The compensation court may adopt and promulgate rules and regulations pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee and related issues to be submitted to the independent medical examiner. In addition to the review of records and information, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties or by the compensation court.

(5) The independent medical examiner shall submit a written report to the compensation court, the employer, and the employee stating the examiner's medical findings on the issues raised and providing a description of findings sufficient to explain the basis of those findings. The fee for the examination and report shall be paid by the employer.

(6) The written report of the independent medical examiner's findings shall be admissible in a proceeding before the compensation court and may be received into evidence by the compensation court on its own motion.

(7) Any physician acting without malice and within the scope of the physician's duties as an independent medical examiner shall be immune from civil liability for making any report or other information available to the compensa-

tion court or for assisting in the origination, investigation, or preparation of the report or other information so provided.

Source: Laws 1993, LB 757, § 7; Laws 1997, LB 128, § 2; Laws 1999, LB 216, § 8.

Pursuant to subsection (3) of this section, the “reasonableness and necessity” of medical treatment and “causality and relatedness of the medical condition to the employment” are separate and distinct questions upon which an independent examiner may be asked to opine. *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 722 N.W.2d 872 (2009).

This section is applicable only to medical issues arising in cases where liability has been established. *Owen v. American Hydraulics, Inc.*, 254 Neb. 685, 578 N.W.2d 57 (1998).

48-135 Autopsy; cost; payment.

Except as provided in section 23-1824, in all death claims, where the cause of death is obscure or disputed, any interested party may require an autopsy, the cost of such autopsy to be borne by the party demanding the same.

Source: Laws 1913, c. 198, § 35, p. 594; R.S.1913, § 3676; C.S.1922, § 3058; C.S.1929, § 48-135; R.S.1943, § 48-135; Laws 1999, LB 46, § 3.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-136 Compensation; voluntary settlements.

The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers’ compensation insurer, if any, and in accordance with the Nebraska Workers’ Compensation Act. No such settlement shall be binding unless the settlement is in accordance with such act.

Source: Laws 1913, c. 198, § 36, p. 595; R.S.1913, § 3677; Laws 1917, c. 85, § 12, p. 209; C.S.1922, § 3059; C.S.1929, § 48-136; Laws 1935, c. 57, § 22, p. 199; C.S.Supp.,1941, § 48-136; R.S.1943, § 48-136; Laws 1978, LB 649, § 2; Laws 1986, LB 811, § 54; Laws 2005, LB 238, § 6; Laws 2009, LB630, § 4.

A finding by the Workers’ Compensation Court that an alleged injury is covered by the Workers’ Compensation Act is not necessarily a prerequisite to a settlement agreement which includes a program of vocational rehabilitation paid for by the employer or its insurer. *Miner v. Robertson Home Furnishing*, 239 Neb. 525, 476 N.W.2d 854 (1991).

Agreements to settle workers’ compensation cases not filed in and approved by the Workers’ Compensation Court are void and of no effect. *Miner v. Robertson Home Furnishing*, 239 Neb. 525, 476 N.W.2d 854 (1991).

An agreement dividing compensation benefits between the parties was void where not in writing, filed with and approved by the compensation court. *James v. Rainchief Constr. Co.*, 197 Neb. 818, 251 N.W.2d 367 (1977).

Copy of lump sum settlement is required to be filed with compensation court. *Miller v. Schlereth*, 151 Neb. 33, 36 N.W.2d 497 (1949).

Where settlement was never approved by workmen’s compensation court, it was ineffective to defeat claim for compensation.

Riggins v. Lincoln Tent & Awning Co., 143 Neb. 893, 11 N.W.2d 810 (1943).

Agreement to pay compensation must be approved by compensation commissioner or compensation court or it is void, and part payment will not make such agreement actionable at common law. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

Copy of settlement must not only be filed, but the settlement must also be approved by compensation court. *Zurich General Accident & Liability Ins. Co. v. Walker*, 128 Neb. 327, 258 N.W. 550 (1935).

In order to have a valid agreement for settlement, terms of act must be followed. *Ashton v. Blue River Power Co.*, 117 Neb. 661, 222 N.W. 42 (1928).

Lump sum settlement was sustained. *Perry v. Huffman Auto. Co.*, 104 Neb. 211, 175 N.W. 1021 (1920).

Under former statute, court had no authority to order commutation of payments in lump sum in absence of agreement. *Pierce v. Boyer-Van Kuran Lumber & Coal Co.*, 99 Neb. 321, 156 N.W. 509 (1916).

48-137 Compensation claims; actions; statute of limitations; exceptions.

In case of personal injury, all claims for compensation shall be forever barred unless, within two years after the accident, the parties shall have agreed upon the compensation payable under the Nebraska Workers’ Compensation Act, or

unless, within two years after the accident, one of the parties shall have filed a petition as provided in section 48-173. In case of death, all claims for compensation shall be forever barred unless, within two years after the death, the parties shall have agreed upon the compensation under the Nebraska Workers' Compensation Act, or unless, within two years after the death, one of the parties shall have filed a petition as provided in section 48-173. When payments of compensation have been made in any case, such limitation shall not take effect until the expiration of two years from the time of the making of the last payment. In the event of legal disability of an injured employee or his or her dependent such limitation shall not take effect until the expiration of two years from the time of removal of such legal disability.

Source: Laws 1913, c. 198, § 38, p. 595; R.S.1913, § 3679; Laws 1917, c. 85, § 14, p. 210; C.S.1922, § 3061; C.S.1929, § 48-138; R.S.1943, § 48-137; Laws 1961, c. 234, § 3, p. 693; Laws 1977, LB 144, § 2; Laws 1986, LB 811, § 55.

1. Agreement by employer to compensate
2. Filing of petition
3. Payment of compensation
4. Latent and progressive injury
5. Material change in condition
6. Miscellaneous

1. Agreement by employer to compensate

Where employer agreed to compensate employee for injury and employee relying on promise, waited more than a year from time of accident to begin action, employer could not plead statute of limitations hereunder. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

2. Filing of petition

The 2-year limitation contained in this section is contingent upon the failure of one of the parties to file a petition. *Foote v. O'Neill Packing*, 262 Neb. 467, 632 N.W.2d 313 (2001).

A claim for compensation filed 4 years after the date of the accident, with no allegation of excuse tolling the operation of the statute of limitations, is subject to demurrer. *Bernhardt v. County of Scotts Bluff*, 240 Neb. 423, 482 N.W.2d 262 (1992).

A proceeding under section 48-141, R.R.S.1943, to modify a previous award of the compensation court to recover additional compensation for an increase in incapacity can only be brought within two years of the time the employee knows, or is chargeable with knowledge, that his condition has materially changed and there is such a substantial increase in his disability as to entitle him to additional compensation. *O'Connor v. Anderson Bros. Plumbing & Heating*, 207 Neb. 641, 300 N.W.2d 188 (1981).

Where plaintiff's injury is known, and medical facts as to the extent of the injury were reasonably discoverable, the injury is not latent, and must be brought within the one-year statute of limitations. *McGahan v. St. Francis Hospital*, 200 Neb. 406, 263 N.W.2d 845 (1978).

Consideration of question of failure to file petition in time was unnecessary where employee failed to establish compensable injury. *Cole v. Cushman Motor Works*, 159 Neb. 97, 65 N.W.2d 330 (1954).

Time in which to bring action is tolled while employee is a minor. *Krajewski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Petition was filed in time. *Gilbert v. Metropolitan Utilities Dist.*, 156 Neb. 750, 57 N.W.2d 770 (1953).

Petition is required to be filed within one year after employee acquires knowledge of a compensable disability. *McCoy v. Gooch Milling & Elevator Co.*, 156 Neb. 95, 54 N.W.2d 373 (1952).

An injured workman has one year in which to file petition in workmen's compensation case. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Where an employee, with full knowledge of his injury, fails to make claim for compensation within six months, and fails to file petition within one year, his claim is barred. *Surratt v. Otoe Food Products Co.*, 146 Neb. 854, 21 N.W.2d 862 (1946).

To recover additional compensation for an increase in disability, proceedings must be brought within one year from the time the employee knows or is chargeable with knowledge that his condition has materially changed. *Scott v. State*, 137 Neb. 348, 289 N.W. 367 (1939).

Where employee is injured and dies in October 1931, and no claim is filed on behalf of minor dependents until September 1936, such claim is barred by statute of limitations. *Ray v. Sanitary Garbage Co.*, 134 Neb. 178, 278 N.W. 139 (1938).

Failure to comply with statutory requirements as to filing claim and filing petition precludes recovery. *Johansen v. Farmers Mutual Hail Ins. Assn.*, 133 Neb. 118, 274 N.W. 393 (1937).

Where petition was filed within one year after assault causing injury, it was within time. *Miller v. George & Mary Reisch Co.*, 132 Neb. 338, 271 N.W. 853 (1937).

Where statute has become bar to claim for compensation during lifetime of injured employee it is also a bar to a claim by his dependents after his death. *Price v. Burlington Refrigerator Express Co.*, 131 Neb. 657, 269 N.W. 425 (1936).

Officer in municipal fire department, injured while fighting fire, was barred from claiming compensation when he failed to file petition within one year after date to which city had paid his salary in full. *Dunlap v. City of Omaha*, 131 Neb. 632, 269 N.W. 422 (1936).

Proceedings for compensation cannot be maintained where no claim is filed within six months, or petition within one year, of death of employee. *Welton v. Swift & Co.*, 125 Neb. 455, 250 N.W. 661 (1933).

Where action is not brought within one year of last payment of compensation, it is barred hereunder. *Kurtz v. Sunderland Bros. Co.*, 124 Neb. 776, 248 N.W. 84 (1933).

Recovery was not barred where employee made claim of employer within two months after injury and lodged claim with commissioner within seven months thereof. *Palmer v. Saunders County*, 117 Neb. 484, 221 N.W. 99 (1928).

Where petition was filed more than one year after injuries were sustained, claim was barred. *Duhrkopf v. Bennett*, 108 Neb. 142, 187 N.W. 813 (1922).

Knowledge by employer that employee was injured does not excuse latter from making claim for compensation within statutory period. *Good v. City of Omaha*, 102 Neb. 654, 168 N.W. 639 (1918).

3. Payment of compensation

In determining when the statute of limitations begins to run in situations where payments of compensation have been made, "the time of the making of the last payment" means the date the employee or the employee's provider receives payment. *Obermiller v. Peak Interest*, 277 Neb. 656, 764 N.W.2d 410 (2009).

This section provides that when payments of workers' compensation have been made, the statute of limitations will not take effect until the expiration of 2 years from the time of the making of the last payment of compensation. Payments for medical case-management services that are not required by the Nebraska Workers' Compensation Act and that result in no benefit to the injured employee do not constitute payments of compensation which toll the statute of limitations set forth in this section. *Smart v. Scrivner/Food 4 Less*, 254 Neb. 111, 574 N.W.2d 505 (1998).

Generally, a payment for compensation benefits made by an employer's insurance carrier for an accident which predated its coverage tolls the statute of limitations and binds the employer. *Fenster v. Clark Bros. Sanitation*, 235 Neb. 336, 455 N.W.2d 169 (1990).

Furnishing of medical services constitutes payment of compensation and is sufficient to toll running of statute. *Gourley v. City of Grand Island*, 168 Neb. 538, 96 N.W.2d 309 (1959).

Where no petition has been filed by either party but compensation actually has been paid, in the absence of legal disabilities or latent injuries, the limitation provided by statute shall take effect at the expiration of one year after time of making the last payment of compensation. *Hill v. Hinky-Dinky Stores Co.*, 133 Neb. 147, 274 N.W. 455 (1937).

Substitute check given to replace one lost does not extend time in which action must be brought hereunder. *Samland v. Ford Motor Co.*, 123 Neb. 819, 244 N.W. 404 (1932).

Medical, surgical, and hospital services furnished by employer constituted payment of compensation within meaning of this section. *Baade v. Omaha Flour Mills Co.*, 118 Neb. 445, 225 N.W. 117 (1929).

On payments of compensation without agreement of settlement, limitation does not take effect until one year after last payment. *Ashton v. Blue River Power Co.*, 117 Neb. 661, 222 N.W. 42 (1928).

When payments of workers' compensation have been made, the statute of limitations shall not take effect until the expiration of 2 years from the time of the making of the last payment. *Sands v. School Dist. of City of Lincoln*, 7 Neb. App. 28, 581 N.W.2d 894 (1998).

4. Latent and progressive injury

The 2-year limitations period contained in this section is tolled when a claimant suffers a latent and progressive injury. The statute will not begin to run until it becomes, or should have become, reasonably apparent to the claimant that a compensable disability was present. *Gloria v. Nebraska Public Power Dist.*, 231 Neb. 786, 438 N.W.2d 142 (1989); *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

If an injury is deemed to be, at the outset, latent and progressive, the statute of limitations does not begin to run until the employee discovers or should have discovered he has a compensable disability. *Cemer v. Huskoma Corp.*, 221 Neb. 175, 375 N.W.2d 620 (1985).

Generally, reimbursement of medical expense by an employer or under a group health insurance agreement does not constitute remuneration in lieu of workmen's compensation benefits so as to toll the statute of limitations. Steadily debilitating knee

injury was not within the latent exception to the statute of limitations. *Maxey v. Fremont Department of Utilities*, 220 Neb. 627, 371 N.W.2d 294 (1985).

If an employee suffers an injury which appears to be slight but which is progressive in its course, and which several physicians are unable to correctly diagnose, the worker's failure to file a claim or bring suit in time will not defeat his right to recovery, if he gave notice and commenced action within the statutory period after he learned that compensable disability resulted from the original accident. The mere fact that the employee did not know the full extent of his injury from a medical standpoint does not make it latent, particularly where the medical facts were reasonably discoverable, and the burden of proving the injury to have been latent and progressive is upon the employee. *Thomas v. Kayser-Roth Corp.*, 211 Neb. 704, 320 N.W.2d 111 (1982).

Where an occupational disease results from continual absorption of small quantities of a deleterious substance from the employment environment over a period of time, the afflicted employee is considered "injured" only when the accumulated effects of the substance manifest themselves, which is when the employee becomes disabled and entitled to compensation. The statute of limitations runs from the date when the disability first occurred. *Osteen v. A.C. and S., Inc.*, 209 Neb. 282, 307 N.W.2d 514 (1981).

Where injury is latent and progressive, period of limitation begins to run when true nature thereof is first discovered by claimant. *Borowski v. Armco Steel Corp.*, 188 Neb. 654, 198 N.W.2d 460 (1972); *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

Period of limitation provided in this section runs from the time it is reasonably apparent that a compensable injury has been sustained, if the employee is aware that the disability is due to his employment. *Williams v. Dobberstein*, 182 Neb. 862, 157 N.W.2d 776 (1968).

Statute of limitations did not commence to run on disability progressive in nature until employee had knowledge that compensable disability had resulted. *Welke v. City of Ainsworth*, 179 Neb. 496, 138 N.W.2d 808 (1965).

Statute of limitations commences to run from the time the employee has knowledge that an accident has caused a compensable disability. *Ohnmacht v. Peter Kiewit Sons Co.*, 178 Neb. 741, 135 N.W.2d 237 (1965).

To be effective to toll the statute of limitations, furnishing of medical services must have been made within one year of filing of petition. *Schweiger v. Island Supply Co.*, 178 Neb. 547, 134 N.W.2d 233 (1965).

In case of a latent injury, the time for commencement of action is one year after the employee obtained knowledge that the accident caused compensable disability. *Seymour v. Journal-Star Printing Co.*, 174 Neb. 150, 116 N.W.2d 297 (1962).

Where injury is latent and did not result in compensable disability, failure to file claim and commence action within time prescribed by statute will not defeat later action. *Plambeck v. Natkin & Co.*, 171 Neb. 774, 107 N.W.2d 734 (1961); *Webb v. Consumers Cooperative Assn.*, 171 Neb. 758, 107 N.W.2d 737 (1961).

Where an employee suffers an injury the character of which is ascertainable only by medical men, and medical men are unable to ascertain it up to a certain time, the statute of limitations does not begin to run until the injury is ascertained. *Keenan v. Consumers Public Power Dist.*, 152 Neb. 54, 40 N.W.2d 261 (1949).

When an employee receives an accidental injury which activates a dormant disease, the failure to bring suit within a year is not a bar if action is brought within one year after the employee acquires knowledge of a compensable disability. *Dryden v. Omaha Steel Works*, 148 Neb. 1, 26 N.W.2d 293 (1947).

Where injury is latent and progressive, claim must be filed within six months from the time the employee acquires knowledge of a compensable disability. *Lind v. Nebraska National Guard*, 144 Neb. 122, 12 N.W.2d 652 (1944).

In case of physical or mental incapacity resulting from injury, the statutory limitations as to notice and commencement of action do not begin to run until six months after removal of such incapacity. *Mulvey v. City of Lincoln*, 131 Neb. 279, 267 N.W. 459 (1936).

Where injury is latent and progressive, claim must be made within six months from time employee acquires knowledge of compensable disability. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

Where action was begun within statutory period after employee has knowledge of compensable injury, action was not barred. *Astuto v. V. Ray Gould Co.*, 123 Neb. 138, 242 N.W. 375 (1932).

Where injury is latent, subsequently culminating in compensatory disability, claim for such injury may be filed within year from culmination thereof. *Travelers Ins. Co. v. Ohler*, 119 Neb. 121, 227 N.W. 449 (1929).

Failure to file a claim or bring suit within specified time does not defeat right to compensation where injury is latent, if notice is given and action commenced within statutory period after employee has knowledge that compensable disability has resulted. *City of Hastings v. Saunders*, 114 Neb. 475, 208 N.W. 122 (1926); *McGuire v. Phelan-Shirley Co.*, 111 Neb. 609, 197 N.W. 615 (1924); *Selders v. Cornhusker Oil Co.*, 111 Neb. 300, 196 N.W. 316 (1923).

If an employee suffers an injury which appears to be slight but which is progressive in its course, and which several physicians are unable to correctly diagnose, the worker's failure to file a claim or bring suit in time will not defeat his right to recovery, if he gave notice and commenced the action within the statutory period after he learned that a compensable disability resulted from the original accident. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

In the case of a latent injury, the time for commencement of the action is 1 year after the employee obtained knowledge that the accident caused the compensable disability. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

The mere fact that the employee does not know the full extent of his injury from a medical standpoint does not make it latent so as to toll the running of the limitations period, particularly where medical facts were reasonably discoverable, and the burden of proving the injury to have been latent and progressive is upon the employee. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

In workers' compensation cases involving a claim for an occupational disease, the statute of limitations begins to run when the accumulated effects of the disease manifest themselves, which is when the employee becomes disabled and entitled to compensation. *Ross v. Baldwin Filters*, 5 Neb. App. 194, 557 N.W.2d 368 (1996).

5. Material change in condition

An employee seeking application of the exception for a material change in condition and substantial increase in disability is

not required to demonstrate that he or she could not have filed a petition earlier than he or she did. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The exception for a material change in condition and substantial increase in disability was not rendered unenforceable by *Bassinger v. Nebraska Heart Hosp.*, 282 Neb. 835, 806 N.W.2d 395 (2011). *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

The Legislature has acquiesced to the exception for a material change in condition and substantial increase in disability. *Lenz v. Central Parking System of Neb.*, 288 Neb. 453, 848 N.W.2d 623 (2014).

6. Miscellaneous

In an occupational disease context, the date of injury, for purposes of this section, is that date upon which the accumulated effects of the disease manifest themselves to the point the injured worker is no longer able to render further service. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

This section has at least two exceptions, including (1) where a "latent and progressive" injury is not discovered within 2 years of the accident which caused the injury and (2) where a material change in condition occurs which necessitates additional medical care and from which an employee suffers increased disability. *Snipes v. Sperry Vickers*, 251 Neb. 415, 557 N.W.2d 662 (1997).

In barring a workmen's compensation claim as untimely filed, compensation court held the limitation provision begins to run from the time it becomes reasonably apparent or should have become reasonably apparent that a compensable claim exists. *Novak v. Triangle Steel Co.*, 197 Neb. 783, 251 N.W.2d 158 (1977).

Time for bringing action is not tolled by mental incapacity of employee's attorney. *Bame v. Lipsett, Inc.*, 172 Neb. 623, 111 N.W.2d 380 (1961).

Where employer denies liability, wages paid are not credited on award. *Anderson v. Cowger*, 158 Neb. 772, 65 N.W.2d 51 (1954).

Application for additional award may be made although original award is fully paid. *Peek v. Ayers Auto Supply*, 157 Neb. 363, 59 N.W.2d 564 (1953).

Limitation does not begin to run until six months after removal of mental or physical incapacity. *Simon v. Cathroe Co.*, 101 Neb. 211, 162 N.W. 633 (1917).

There are two exceptions to the statute of limitations: (1) where a latent and progressive injury is not discovered within 2 years of the accident which caused the injury and (2) where a material change in condition occurs which necessitates additional medical care and from which an employee suffers increased disability. *Wissing v. Walgreen Company*, 20 Neb. App. 332, 823 N.W.2d 710 (2012).

48-138 Compensation; lump-sum settlement; computation; fee.

The amounts of compensation payable periodically under the law by agreement of the parties with the approval of the Nebraska Workers' Compensation Court may be commuted to one or more lump-sum payments, except compensation due for death, permanent disability, or claimed permanent disability which may be commuted only as provided in section 48-139. If commutation is agreed upon pursuant to this section or section 48-139, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five percent per annum with annual rests.

The fee of the clerk of the compensation court for filing, docketing, and indexing an agreement submitted for approval 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 1913, c. 198, § 40, p. 596; R.S.1913, § 3681; 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, § 48-138; Laws 1975, LB 187, § 3; Laws 1986, LB 811, § 56; Laws 1993, LB 757, § 9; Laws 2009, LB630, § 5.

It was the legislative intent that compensation court should have exclusive original jurisdiction in handling claims for compensation. Zurich General Accident & Liability Ins. Co. v. Walker, 128 Neb. 327, 258 N.W. 550 (1935).

One relying on lump sum settlement must bring himself within statute. Ostegaard v. Adams & Kelly Co., 113 Neb. 393, 203 N.W. 564 (1925).

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. This subdivision (ii) is not applicable if the employee's right to receive future medical, surgical, and hospital services as provided in section 48-120 is specifically excluded from the settlement and medicare has not paid medical, surgical, or hospital expenses or if medicare has paid medical, surgical, or hospital expenses for which it claims it is entitled to reimbursement and medicare has been reimbursed for such expenses at the time 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. This subdivision (b) is not applicable if the employee's right to receive future medical, surgical, and hospital services as provided in section 48-120 is specifically excluded from the settlement and medicare has not paid medical, surgical, or hospital expenses or if medicare has paid medical, surgical, or hospital expenses for which it claims it is entitled to reimbursement and medicare has been reimbursed for such expenses at the time 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 compensa-

tion 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; Laws 2021, LB256, § 1.

Effective date August 28, 2021.

1. Lump sum settlement
2. Commutation
3. Release

1. Lump sum settlement

If an application for approval of a lump-sum settlement is not approved, the workers' compensation court may (1) dismiss the application at the cost of the employer or (2) continue the hearing, in the discretion of the compensation court. *Loyd v. Family Dollar Stores of Neb.*, 304 Neb. 883, 937 N.W.2d 487 (2020).

Pursuant to subsection (1) of this section, a lump-sum settlement must be submitted to the compensation court for approval when the claimant is a Medicare beneficiary. *Loyd v. Family Dollar Stores of Neb.*, 304 Neb. 883, 937 N.W.2d 487 (2020).

Where lump sum settlement is made and later application is made for further compensation for disability claimed not covered by settlement, burden of proof is on employee. *Gooch Milling & Elevator Co. v. Warner*, 127 Neb. 796, 257 N.W. 224 (1934).

Where approved lump sum settlement, accepted by employee before death, was complete compensation, widow was not entitled to further award. *Lincoln Packing Co. v. Coe*, 120 Neb. 299, 232 N.W. 92 (1930).

Final power to award lump sum settlement for employee's death or permanent disability rests with district court, subject to review. *Jackson v. Ford Motor Co.*, 115 Neb. 758, 214 N.W. 631 (1927).

Lump sum settlements are authorized only in sound discretion of district court. *Myers v. Armour & Co.*, 103 Neb. 407, 172 N.W. 45 (1919).

Sections 48-140 and 48-141 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to this section

on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

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

2. Commutation

In the approval of commutation of compensation, the public has an interest which it is the duty of the court to protect without regard to the wishes of the parties. *Perry v. Huffman Auto. Co.*, 104 Neb. 211, 175 N.W. 1021 (1920).

Commutation cannot be ordered except with consent of both parties, but court must ratify. *Pierce v. Boyer-Van Kuran Lumber & Coal Co.*, 99 Neb. 321, 156 N.W. 509 (1916); *Bailey v. United States Fidelity & Guaranty Co.*, 99 Neb. 109, 155 N.W. 237 (1915).

3. Release

A verified release results in a full and complete discharge from all liability under the Nebraska Workers' Compensation Act but does not become effective until the Workers' Compensation Court files an order of dismissal with prejudice. *Dragon v. Cheesecake Factory*, 300 Neb. 548, 915 N.W.2d 418 (2018).

By filing a release pursuant to the settlement procedures in subsection (3) of this section, a worker waives all rights under the Nebraska Workers' Compensation Act, including both the right to penalties and attorney fees under section 48-125 and the right to ask a judge of the compensation court to decide the parties' rights and obligations. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section does not deprive the Workers' Compensation Court of

jurisdiction to hear further issues in a case. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

The filing of a release pursuant to subsection (3) of this section, not actual payment of the lump-sum settlement, effects a discharge from liability for the employer. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

There is no ambiguity in the statutorily required language for a release pursuant to subsection (3) of this section. *Holdsworth v. Greenwood Farmers Co-op*, 286 Neb. 49, 835 N.W.2d 30 (2013).

48-140 Compensation; lump-sum settlements; conclusiveness; exception.

Any lump-sum settlement by agreement of the parties pursuant to section 48-139 shall be final and not subject to readjustment if the settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud. All awards of compensation made by the compensation court, except those amounts payable periodically, shall be final and not subject to readjustment.

Source: Laws 1913, c. 198, § 41, p. 597; R.S.1913, § 3682; Laws 1917, c. 85, § 17, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3064; C.S.1929, § 48-141; Laws 1935, c. 57, § 26, p. 200; C.S.Supp.,1941, § 48-141; R.S.1943, § 48-140; Laws 1975, LB 187, § 5; Laws 1986, LB 811, § 58; Laws 1989, LB 410, § 1; Laws 1993, LB 757, § 11; Laws 2009, LB630, § 7.

1. Lump-sum settlement
2. Approval
3. Miscellaneous

1. Lump-sum settlement

Lump sum settlement is not final unless approved as required by act. *Miller v. Schlereth*, 151 Neb. 33, 36 N.W.2d 497 (1949).

Lump sum settlement must conform to statutory requirements, including filing copy with and approval by compensation court. *Ashton v. Blue River Power Co.*, 117 Neb. 661, 222 N.W. 42 (1928).

One relying upon lump sum settlement must bring himself within statute. *Ostegaard v. Adams & Kelly Co.*, 113 Neb. 393, 203 N.W. 564 (1925).

Lump sum settlement is final, and is not subject to modification as in case of periodic payments. *Bailey v. United States Fidelity & Guaranty Co.*, 99 Neb. 109, 155 N.W. 237 (1915).

Sections 48-139 and 48-141 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

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

2. Approval

The provisions in this section which bar proceedings to modify an award of compensation payable periodically over a period of less than six months are invalid as an unreasonable classification. *Snyder v. IBP, Inc.*, 229 Neb. 224, 426 N.W.2d 261 (1988).

Where settlement was never approved by workmen's compensation court, it was ineffective to defeat claim for compensation. *Riggins v. Lincoln Tent & Awning Co.*, 143 Neb. 893, 11 N.W.2d 810 (1943).

An agreement to pay compensation must be approved by compensation court or it is void, and part payment will not make such agreement actionable at common law. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

Compensation commissioner has exclusive original jurisdiction of claims arising under compensation law. *Zurich General Accident & Liability Ins. Co. v. Walker*, 128 Neb. 327, 258 N.W. 550 (1935).

Award is subject to modification, if it covers period over six months, part of which has elapsed at time award is made. *Harmon v. J. H. Wiese Co.*, 121 Neb. 137, 236 N.W. 186 (1931).

If court finds disability will not continue for more than six months and fixes compensation therefor, court cannot at subsequent term change that judgment, but, if finding is that disability will continue for more than six months, court may, upon application, modify after six months expires. *Hanley v. Union Stock Yards Co.*, 100 Neb. 232, 158 N.W. 939 (1916).

3. Miscellaneous

A finding by the Workers' Compensation Court that an alleged injury is covered by the Workers' Compensation Act is not necessarily a prerequisite to a settlement agreement which includes a program of vocational rehabilitation paid for by the employer or its insurer. *Miner v. Robertson Home Furnishing*, 239 Neb. 525, 476 N.W.2d 854 (1991).

48-141 Lump-sum settlement; finality; periodic payment; modification.

All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump-sum payments pursuant to section 48-139 shall be final and not subject to readjustment if the lump-sum settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud, but the amount of any agreement or award payable periodically may be modified as

follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

Source: Laws 1913, c. 198, § 42, p. 597; R.S.1913, § 3683; Laws 1917, c. 85, § 18, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3065; Laws 1929, c. 81, § 2, p. 274; C.S.1929, § 48-142; Laws 1935, c. 57, § 27, p. 201; C.S.Supp.,1941, § 48-142; R.S.1943, § 48-141; Laws 1975, LB 187, § 6; Laws 1986, LB 811, § 59; Laws 1989, LB 410, § 2; Laws 1993, LB 757, § 12; Laws 2009, LB630, § 8.

1. Modification of award
2. Attorney's fees
3. Miscellaneous

1. Modification of award

To establish a change in incapacity under this section, an applicant must show a change in impairment and a change in disability. In a workers' compensation context, impairment refers to a medical assessment, whereas disability relates to employability. *Rader v. Speer Auto*, 287 Neb. 116, 841 N.W.2d 383 (2013).

The party seeking modification has the burden to prove the allegations in its petition to modify the running award of temporary total disability benefits. *Visoso v. Cargill Meat Solutions*, 285 Neb. 272, 826 N.W.2d 845 (2013).

If future medical expenses are not a part of a final award, the judgment is final, and any future claims for medical expenses related to the same accident are absolutely barred unless the requirements of this section are met. *Green v. Drivers Mgmt., Inc.*, 263 Neb. 197, 639 N.W.2d 94 (2002).

Under this section, the applicant for modification must prove by a preponderance of the evidence that the increase in his incapacity was due solely to the injury resulting from the original accident. In proving an increase in incapacity, the applicant must prove by a preponderance of the evidence that there now exists a material and substantial change for the worse in the applicant's condition—a change in circumstances that justifies a modification, distinct and different from that for which an adjudication had been previously made. *Gomez v. Kenney Deans, Inc.*, 232 Neb. 646, 441 N.W.2d 632 (1989).

Before an employee may obtain a modification of an agreement or award for periodic payment of compensation, increasing the compensation paid on account of a previously compensable injury, the employee must prove, by a preponderance of the evidence, an increase in incapacity due solely to the previous compensable injury. *Grauerholz v. Cornhusker Packing Co.*, 230 Neb. 641, 432 N.W.2d 831 (1988).

The provisions in this section which bar proceedings to modify an award of compensation payable periodically over a period of less than six months are invalid as an unreasonable classification. *Snyder v. IBP, Inc.*, 229 Neb. 224, 426 N.W.2d 261 (1988).

A proceeding under section 48-141, R.R.S.1943, to modify a previous award of the compensation court to recover additional compensation for an increase in incapacity can only be brought within two years of the time the employee knows, or is chargeable with knowledge, that his condition has materially changed and there is such a substantial increase in his disability as to entitle him to additional compensation. *O'Connor v. Anderson Bros. Plumbing & Heating*, 207 Neb. 641, 300 N.W.2d 188 (1981).

An award which is payable periodically for six months or more is subject to modification on the ground of increase of incapacity due solely to the injury. *Camp v. Blount Bros. Corp.*, 195 Neb. 459, 238 N.W.2d 634 (1976).

The amount payable periodically by agreement or award may be modified if recipient's condition changes thereafter. *Shotwell v. Industrial Builders, Inc.*, 187 Neb. 320, 190 N.W.2d 624 (1971).

Modification is limited to increase or decrease that has occurred since award of compensation was rendered. *Pavel v. Hughes Brothers, Inc.*, 167 Neb. 727, 94 N.W.2d 492 (1959).

Where amount of award is payable periodically for six months or more, application for increase in award may be made. *Peek v. Ayers Auto Supply*, 160 Neb. 658, 71 N.W.2d 204 (1955).

Statute restricts basis for modification to increase or decrease of incapacity since original award. *Peek v. Ayers Auto Supply*, 157 Neb. 363, 59 N.W.2d 564 (1953).

Right to maintain proceedings for modification is recognized. *Dietz v. State*, 157 Neb. 324, 59 N.W.2d 587 (1953).

Basis for modification is limited to increase or decrease of incapacity which has occurred since the award and is due to the injury. *Riedel v. Smith Baking Co.*, 150 Neb. 28, 33 N.W.2d 287 (1948).

Basis for modification of award is limited to increase or decrease of incapacity due solely to injury. *Ludwickson v. Central States Electric Co.*, 142 Neb. 308, 6 N.W.2d 65 (1942).

Upon application to modify an award of compensation under this section, petitioner must establish that the disability has increased, decreased, or terminated. *Kucera v. Village of Prague*, 141 Neb. 180, 3 N.W.2d 201 (1942).

Proceeding to recover additional compensation for increased disability must be brought within one year from time employee is chargeable with knowledge of his right to additional compensation. *Scott v. State*, 137 Neb. 348, 289 N.W. 367 (1939).

Employee must establish a material change for the worse to entitle him to additional compensation. *Huff v. Omaha Cold Storage Co.*, 136 Neb. 907, 287 N.W. 764 (1939).

This section makes provision for situation where employee's injuries cause total permanent disability at some future date after award. *Micek v. Omaha Steel Works*, 136 Neb. 843, 287 N.W. 645 (1939).

Judgment is not final in sense that it can never be inquired into again where increase or decrease of incapacity can be shown. *Great Western Sugar Co. v. Hewitt*, 127 Neb. 790, 257 N.W. 61 (1934).

Application to modify follows same procedure as in case of dispute except that where award is made by district court, application should be filed in that court. *Metropolitan Dining Room v. Jensen*, 126 Neb. 765, 254 N.W. 405 (1934).

Construing this with preceding section, award is subject to modification if it covers period over six months, part of which has expired before award was made. *Harmon v. J. H. Wiese Co.*, 121 Neb. 137, 236 N.W. 186 (1931).

Application for modification of award for increase or decrease of incapacity may be made at any time after six months from date of award. *Updike Grain Co. v. Swanson*, 103 Neb. 872, 174 N.W. 862 (1919).

Lump sum settlements are final, and not subject to modification as in case of periodic payments. *Bailey v. United States Fidelity & Guaranty Co.*, 99 Neb. 109, 155 N.W. 237 (1915).

To establish a change in incapacity under this section, an applicant must show a change in impairment and a change in disability. *Moss v. C&A Indus.*, 25 Neb. App. 877, 915 N.W.2d 615 (2018).

Whether an applicant's incapacity has increased under the terms of this section is a finding of fact. *Moss v. C&A Indus.*, 25 Neb. App. 877, 915 N.W.2d 615 (2018).

Sections 48-139 and 48-140 and this section emphasize the finality of a lump-sum settlement and only contemplate "readjustment" if the "settlement" itself is procured by fraud; the statutes do not speak to readjusting underlying "awards" allegedly procured by fraud. *Hunt v. Pick's Pack-Hauler*, 23 Neb. App. 278, 869 N.W.2d 723 (2015).

A court may modify a workers' compensation award based on a change in incapacity due to a mental condition arising out of a work-related physical injury if the change is due solely to the work-related injury. *Jurgens v. Irwin Indus. Tool Co.*, 20 Neb. App. 488, 825 N.W.2d 820 (2013).

An employee seeking temporary total disability benefits must file a petition for modification as soon as she becomes totally disabled. *Jurgens v. Irwin Indus. Tool Co.*, 20 Neb. App. 488, 825 N.W.2d 820 (2013).

Where the original award of benefits did not award vocational rehabilitation services, the applicant needed to comply with the requirements of this section and allege and prove that he had suffered an increase in incapacity since the entry of the original award in order to obtain the requested vocational rehabilitation services. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

In order to achieve a modification of a lump-sum payment that has been approved by court order pursuant to section 48-139 on the ground of increased or decreased incapacity, a party must make an application on the ground of increase or decrease of incapacity due solely to the injury. *Hubbart v. Hormel Foods Corp.*, 15 Neb. App. 129, 723 N.W.2d 350 (2006).

In the context of body as a whole injuries, an applicant for modification who must fulfill the requirements set forth in this section by demonstrating a change in incapacity must establish both a change in the employee's physical condition, or impairment, and a change in the employee's disability. *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

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

A workers' compensation award may be modified at any time after 6 months from the date of the agreement or award, following an application made by either party on the ground of increase or decrease of incapacity due solely to the injury. A finding that an applicant's incapacity has increased under the terms of this section is a finding of fact. *Sands v. School Dist. of City of Lincoln*, 7 Neb. App. 28, 581 N.W.2d 894 (1998).

2. Attorney's fees

Attorney's fees are taxable against insurance carrier on denial of its application to reduce compensation payments. *Southern Surety Co. v. Parmely*, 121 Neb. 146, 236 N.W. 178 (1931).

Attorney's fees are allowable in Supreme Court to employee successfully resisting effort to reduce modified award. *Harmon v. J. H. Wiese Co.*, 121 Neb. 137, 236 N.W. 186 (1931).

3. Miscellaneous

The Nebraska Workers' Compensation Act does not provide for a motion for new trial in the Nebraska Workers' Compensation Court. *Carter v. Weyerhaeuser Co.*, 234 Neb. 558, 452 N.W.2d 32 (1990).

Increase of incapacity must relate to condition for which original award was made, and not dissatisfaction with original award. *Wilson Concrete Co. v. Rork*, 216 Neb. 447, 343 N.W.2d 764 (1984).

Remedy is provided to cover future rehabilitation of employee obtaining award of total permanent disability. *Rapp v. Hale*, 170 Neb. 620, 103 N.W.2d 851 (1960).

Increase of incapacity must relate to condition for which original award was made. *Chadd v. Western Cas. & Sur. Co.*, 166 Neb. 483, 89 N.W.2d 586 (1958).

Where employer does not file application on ground of decrease of incapacity, but stops payment of compensation, application for continued compensation is an original action. *Rexroat v. State*, 142 Neb. 596, 7 N.W.2d 163 (1942).

Legislature may impose restrictions in nature of time limitations on right created by statute. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

48-142 Compensation; amount agreed upon; payment to trustee; procedure.

At any time after the amount of any award has been agreed upon by the parties and approved by the Nebraska Workers' Compensation Court, a sum equal to the present value of all future installments of compensation may, when death or the nature of the injury renders the amount of future payments certain, by leave of the compensation court, be paid by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this state, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the compensation court, shall operate as a satisfaction of such award as to the employer. Payments from such fund shall be made by the trustee in the same amounts and at the same time as are herein

required of the employer until the fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the compensation court, to the choice of the injured employee or the dependents of the deceased employee as the case may be.

Source: Laws 1913, c. 198, § 43, p. 597; R.S.1913, § 3684; Laws 1917, c. 85, § 19, p. 214; C.S.1922, § 3066; C.S.1929, § 48-143; Laws 1935, c. 57, § 28, p. 201; C.S.Supp.,1941, § 48-143; R.S.1943, § 48-142; Laws 1975, LB 187, § 7; Laws 1986, LB 811, § 60.

48-143 Compensation; death benefits; absence of qualified administrator; payment; to whom made.

In case of death, where no executor or administrator is qualified, the Nebraska Workers' Compensation Court shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent, upon like terms as to bond for the proper application of compensation payments as are required of administrators.

Source: Laws 1913, c. 198, § 44, p. 598; R.S.1913, § 3685; C.S.1922, § 3067; C.S.1929, § 48-144; Laws 1935, c. 57, § 29, p. 202; C.S.Supp.,1941, § 48-144; R.S.1943, § 48-143; Laws 1975, LB 187, § 8; Laws 1986, LB 811, § 61.

Action for compensation by injured employee, pending at his death, may be revived by dependents giving bond or by administrator without bond. *Palmer v. Saunders County*, 117 Neb. 484, 221 N.W. 99 (1928).

Action to recover compensation for death may be brought either by dependents, legal guardian or trustee of minor dependent, or executor or administrator of deceased. *Coster v. Thompson Hotel Co.*, 102 Neb. 585, 168 N.W. 191 (1918).

48-144 Accidents and settlements; reports; death of alien employee; notice to consul.

(1) Reports of accidents and settlements shall be made in a form and manner prescribed by the administrator of the Nebraska Workers' Compensation Court. Such reports, if filed by a workers' compensation insurer on behalf of an employer, shall be deemed to have been filed by the employer.

(2) When an injury results in the death of an employee who is a citizen or subject of a foreign country, the administrator of the compensation court shall, after the death has been reported to the compensation court, at once notify the superior consular officer of the country of which the employee at the time of his or her death was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he or she shall have formally designated as his or her representative by a communication in writing to the compensation court. Such notification shall contain in addition to the name of the employee such further information as the compensation court may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employee.

Source: Laws 1913, c. 198, § 45, p. 598; R.S.1913, § 3686; Laws 1917, c. 85, § 20, p. 214; C.S.1922, § 3068; C.S.1929, § 48-145; Laws 1935, c. 57, § 30, p. 202; C.S.Supp.,1941, § 48-145; R.S.1943, § 48-144; Laws 1986, LB 811, § 62; Laws 2005, LB 13, § 6.

48-144.01 Injuries; reports; time within which to file; terms, defined.

(1) In every case of reportable injury arising out of and in the course of employment, the employer or workers' compensation insurer shall file a report thereof with the Nebraska Workers' Compensation Court. Such report shall be filed within ten days after the employer or insurer has been given notice of or has knowledge of the injury.

(2) For purposes of this section:

(a) Reportable injury means an injury or diagnosed occupational disease which results in: (i) Death, regardless of the time between the death and the injury or onset of disease; (ii) time away from work; (iii) restricted work or termination of employment; (iv) loss of consciousness; or (v) medical treatment other than first aid;

(b) Restricted work means the inability of the employee to perform one or more of the duties of his or her normal job assignment. Restricted work does not occur if the employee is able to perform all of the duties of his or her normal job assignment, but a work restriction is assigned because the employee is experiencing minor musculoskeletal discomfort and for the purpose of preventing a more serious condition from developing;

(c) Medical treatment means treatment administered by a physician or other licensed health care professional; and

(d) First aid means:

(i) Using a nonprescription medication at nonprescription strength. For medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is not first aid;

(ii) Administering tetanus immunizations. Administering other immunizations, such as hepatitis B vaccine and rabies vaccine, is not first aid;

(iii) Cleaning, flushing, or soaking wounds on the surface of the skin;

(iv) Using wound coverings, such as bandages and gauze pads, and superficial wound closing devices, such as butterfly bandages and steri-strips. Using other wound closing devices, such as sutures and staples, is not first aid;

(v) Using hot or cold therapy;

(vi) Using any nonrigid means of support, such as elastic bandages, wraps, and nonrigid back belts. Using devices with rigid stays or other systems designed to immobilize parts of the body is not first aid;

(vii) Using temporary immobilization devices, such as splints, slings, neck collars, and back boards, while transporting accident victims;

(viii) Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;

(ix) Using eye patches;

(x) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;

(xii) Using finger guards;

(xiii) Using massages. Using physical therapy or chiropractic treatment is not first aid; and

(xiv) Drinking fluids for relief of heat stress.

Source: Laws 1971, LB 572, § 11; Laws 1972, LB 1221, § 1; Laws 1986, LB 811, § 63; Laws 2005, LB 238, § 7.

Section 48-144.04 establishes when the statute of limitations begins to run if an initial report required by this section is not filed, but section 48-144.04 does not provide for tolling of an already-running statute of limitations when and if subsequent reports are not filed. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-144.02 Compensation insurance carrier; risk management pool; reports; time within which to file.

(1) Whenever any insurance carrier shall write a policy of workers' compensation insurance under the Nebraska Workers' Compensation Act, such carrier shall file a report showing the name and address of the insured employer, the name of the insurance carrier, the policy number, the effective date and expiration date of such policy, and such other information as the Nebraska Workers' Compensation Court may require. Such report shall be filed with the compensation court within ten days of the effective date of such policy.

(2) Whenever any risk management pool is organized or accepts a new member or whenever any member of a risk management pool voluntarily terminates membership or is involuntarily terminated, such pool shall file a report within ten days after any such event with the Nebraska Workers' Compensation Court showing the names and local addresses of its members or the name, local address, and effective date of termination or joinder of any single member.

Source: Laws 1971, LB 572, § 12; Laws 1986, LB 811, § 64; Laws 1987, LB 398, § 42.

Cross References

Risk management pool, defined, see section 44-4303.

48-144.03 Workers' compensation insurance policy; master policy obtained by professional employer organization; notice of cancellation or nonrenewal; effective date.

(1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers'

compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Subsections (2) and (3) of this section terminate on January 1, 2012. Subsections (5), (6), and (7) of this section apply beginning on January 1, 2012.

(5)(a) This subsection applies to workers' compensation policies other than master policies or multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (i) notice from the employer to the insurer to cancel the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(c) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the employer to the insurer to not renew the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(6)(a) This subsection applies to workers' compensation master policies obtained by a professional employer organization.

(b) No cancellation of a master policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such cancellation shall be effective until thirty days after giving such notices.

(c) No termination of coverage for a client or any employees of a client under a master policy within the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer

organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium.

(d) No master policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No master policy shall expire or lapse until thirty days after giving such notices.

(e) Notice of the cancellation or nonrenewal of a master policy or the termination of coverage for a client or the employees of a client under such a policy shall be given by the professional employer organization to the client within fifteen days after the cancellation, nonrenewal, or termination unless replacement coverage has been obtained.

(7)(a) This subsection applies to workers' compensation multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after giving such notices if such cancellation is based on (i) notice from the client to the professional employer organization or the insurer to cancel the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(c) No termination of coverage for any employees of the client during the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(d) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the client to the professional employer organization or the insurer to not renew the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(e) An insurer may refrain from sending notices required by this subsection to a professional employer organization's client based upon the professional employer organization's representation that coverage has been or will be replaced. Such representation shall not absolve the insurer of its responsibility to continue coverage if such representation proves inaccurate.

(8) Notwithstanding other provisions of this section, if replacement workers' compensation insurance coverage has been secured with another workers' compensation insurer, then the cancellation or nonrenewal of the policy or the termination of coverage for a client or employees of a client under the policy shall be effective as of the effective date of such other insurance coverage.

(9) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy or termination of coverage for a client or employees of a client under a policy.

(10) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt and acceptance by the compensation court.

Source: Laws 1971, LB 572, § 13; Laws 1972, LB 1269, § 1; Laws 1986, LB 811, § 65; Laws 1994, LB 978, § 49; Laws 1994, LB 1222, § 61; Laws 1996, LB 1230, § 1; Laws 2005, LB 13, § 7; Laws 2005, LB 238, § 8; Laws 2007, LB117, § 33; Laws 2009, LB630, § 9; Laws 2010, LB579, § 15.

Under subsection (10) of this section, an insurer need only prove that it sent a notice of cancellation to an employer by certified mail; the insurer's record of the certified mail tracking number used to send the notice itself was not sufficient to prove certified mail service. *Greenwood v. J.J. Hooligan's*, 297 Neb. 435, 899 N.W.2d 905 (2017).

employer's intent to not renew a policy for an additional term or nonrenewal by an employer through lapse at the end of the policy period due to the employer's nonpayment of a renewal premium. *Brouillette v. DBV Enterprises, Inc.*, 9 Neb. App. 757, 619 N.W.2d 482 (2000).

Subsection (2) of this section applies only to an insurer's intent to nonrenew a policy and does not address either an

48-144.04 Reports; penalties for not filing; statutes of limitations not to run until report furnished.

Any employer, workers' compensation insurer, or risk management pool who fails, neglects, or refuses to file any report required of him or her by the Nebraska Workers' Compensation Court shall be guilty of a Class II misdemeanor for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer, workers' compensation insurer, or risk management pool has been given notice, or the employer, workers' compensation insurer, or risk management pool has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in section 48-137 and for injuries occurring before December 1, 1997, the limitations in section 48-128 shall not begin to run against the claim of the injured employee or his or her dependents entitled to compensation or against the State of Nebraska on behalf of the Workers' Compensation Trust Fund, or in favor of either the employer, workers' compensation insurer, or risk management pool

until such report shall have been furnished as required by the compensation court.

Source: Laws 1971, LB 572, § 14; Laws 1977, LB 40, § 271; Laws 1986, LB 811, § 66; Laws 1987, LB 398, § 43; Laws 1997, LB 854, § 3; Laws 2000, LB 1221, § 7; Laws 2005, LB 238, § 9.

Cross References

Risk management pool, defined, see section 44-4303.

Under this section, an employer has sufficient knowledge of an employee's injury if a reasonable person would conclude that an employee's injury is potentially compensable and that the employer should therefore investigate the matter further. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

This section establishes when the statute of limitations begins to run if an initial report required by section 48-144.01 is not

filed, but this section does not provide for tolling of an already-running statute of limitations when and if subsequent reports are not filed. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

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 compensation 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.

A cause of action for retaliatory demotion exists when an employer demotes an employee for filing a workers' compensation claim. *Trosper v. Bag 'N Save*, 273 Neb. 855, 734 N.W.2d 703 (2007).

Nebraska recognizes a public policy exception to the at-will employment doctrine to allow an action for retaliatory discharge when an employee has been discharged for filing a workers' compensation claim. *Jackson v. Morris Communications Corp.*, 265 Neb. 423, 657 N.W.2d 634 (2003).

Pursuant to subsection (3) of this section, where employee alleges that employer has failed to maintain workers' compensation insurance and employer introduces no evidence to refute employee's allegation, district court may exercise jurisdiction over employee's petition for damages for personal injuries sustained by employee in course of working for employer. *Schweitzer v. American Nat. Red Cross*, 256 Neb. 350, 591 N.W.2d 524 (1999).

Under Nebraska statute, any workmen's compensation policy is required to cover all of the employer's liability and all compensation awarded under the act. *Neeman v. Otoe County*, 186 Neb. 370, 183 N.W.2d 269 (1971).

Owner of building used in conducting owner's business who contracts for certain repairs to said building is an employer

within act, unless the contractor was required to procure compensation insurance for protection of his employees. *New Masonic Temple Assn. v. Globe Indemnity Co.*, 134 Neb. 731, 279 N.W. 475 (1938).

Where petition did not show when contract of employment was made, failure to allege election or failure to procure insurance in common-law action for damages did not require dismissal of suit. *Smith v. Fall*, 122 Neb. 783, 241 N.W. 560 (1932).

Noninsuring employer cannot take advantage of his own default to detriment of employee. *Dietz Club v. Niehaus*, 110 Neb. 154, 193 N.W. 344 (1923).

Noninsuring employer is liable either for damages at common law or for compensation, at employee's option. *Avre v. Sexton*, 110 Neb. 149, 193 N.W. 342 (1923).

Provision that employer must insure or furnish proof of ability to pay compensation is constitutional. *Nedela v. Mares Auto Co.*, 110 Neb. 108, 193 N.W. 345 (1923).

Defense that plaintiff employee had waived right to sue at common law by accepting payment of hospital and doctor bill was not sustained. *Brown v. York Water Co.*, 104 Neb. 516, 177 N.W. 833 (1920).

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.

The word "willfully" herein is that failure by act or omission to act done knowingly and intentionally. *Schademann v. Casey*, 194 Neb. 149, 231 N.W.2d 116 (1975).

48-145.02 Employers; reports required.

Every employer shall upon request of the administrator of the Nebraska Workers' Compensation Court report to the administrator (1) the number of its employees and the nature and location of their work, (2) the name of the workers' compensation insurer with whom the employer has insured its liability under the Nebraska Workers' Compensation Act and the number and date of expiration of such policy, and (3) the employer's federal employer identification number or numbers. Failure to furnish such report within ten days from the making of a request by certified or registered mail shall constitute presumptive evidence that the delinquent employer is violating section 48-145.01.

Source: Laws 1971, LB 572, § 19; Laws 1972, LB 1061, § 1; Laws 1986, LB 811, § 69; Laws 2005, LB 13, § 10.

48-145.03 Employers; other liabilities not affected.

Sections 48-125.01, 48-145.01, and 48-145.02 shall not affect any other liability of the employer under the Nebraska Workers' Compensation Act.

Source: Laws 1971, LB 572, § 21; Laws 1986, LB 811, § 70.

48-145.04 Self-insurance; assessment; payments.

(1) The administrator of the Nebraska Workers' Compensation Court shall, prior to January 1 of each year, estimate as closely as possible the actual cost to the court of evaluating an application for self-insurance and supervising and administering the self-insurance program for the ensuing year and assess the amount thereof, but not to exceed two thousand dollars, against each applicant for self-insurance in this state. Such assessment shall be in addition to the payments required by subdivision (2) of section 48-145 and section 48-1,114. The administrator shall notify each applicant of the amount of the individual assessment. Such assessment shall be due and payable with the application for self-insurance. If any assessment is not paid, the application shall not be considered.

(2) All payments received under subsection (1) of this section shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. Such payments shall be expended solely for evaluating applications for self-insurance and to aid in supervising and administering the self-insurance program. After the first year, the balance remaining of such payments at the time each annual assessment is made shall be taken into account when the total assessment for the ensuing year is made.

Source: Laws 1986, LB 1036, § 1; Laws 1992, LB 1006, § 93; Laws 1993, LB 757, § 13; Laws 1999, LB 2, § 1; Laws 2000, LB 1221, § 9; Laws 2005, LB 13, § 11.

48-146 Compensation insurance; provisions required; approval by Department of Insurance; effect of bankruptcy.

No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the workers' compensation insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the employer after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the workers' compensation insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Each workers' compensation insurance policy and each agreement forming a risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into a workers' compensation insurance policy unless copies of such forms have been filed with and approved by the Department of Insurance. Each workers' compensation insurance policy and each agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to

the effect (1) that as between the employer and the workers' compensation insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (2) that jurisdiction of the employer for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (3) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such employer. Except when the Professional Employer Organization Registration Act allows coverage to be limited to co-employees as specified in a professional employer agreement, each workers' compensation insurance policy and each agreement providing such group self-insurance coverage shall include within its terms the payment of compensation to all employees who are within the scope and purview of the Nebraska Workers' Compensation Act, including potential new or unknown employees.

Source: Laws 1913, c. 198, § 47, p. 599; R.S.1913, § 3688; Laws 1917, c. 85, § 22, p. 215; C.S.1922, § 3070; C.S.1929, § 48-147; Laws 1933, c. 91, § 1, p. 364; Laws 1935, c. 57, § 32, p. 203; C.S.Supp.,1941, § 48-147; R.S.1943, § 48-146; Laws 1949, c. 162, § 1, p. 415; Laws 1967, c. 291, § 2, p. 795; Laws 1971, LB 572, § 9; Laws 1986, LB 811, § 71; Laws 1987, LB 398, § 44; Laws 1988, LB 1146, § 2; Laws 1997, LB 474, § 5; Laws 1999, LB 216, § 10; Laws 2005, LB 238, § 11; Laws 2010, LB579, § 17.

Cross References

Construction of section, see section 48-115.01.

Professional Employer Organization Registration Act, see section 48-2701.

Risk management pool, defined, see section 44-4303.

1. Employer and insurer relationship 2. Miscellaneous

1. Employer and insurer relationship

Absent fraud or collusion, insurers in privity with their insureds will be bound by a judgment against the insured, regardless of whether the insurer was notified of the underlying action. *Risor v. Nebraska Boiler*, 274 Neb. 906, 744 N.W.2d 693 (2008).

The provisions of this section requiring that policies insuring liability arising under the Nebraska Workers' Compensation Act provide that jurisdiction over the insured shall be jurisdiction over the insurer and that the insurer shall in all things be bound by the awards, judgments, or decrees rendered against the insured, do not authorize the compensation court to ignore the separate identities of the insured and insurer. *Rodriguez v. Prime Meat Processors*, 228 Neb. 55, 421 N.W.2d 32 (1988).

Joinder of employer for purpose of subrogation was for benefit of insurance carrier. *American Province Real Estate Corp. v. Metropolitan Utilities Dist.*, 178 Neb. 348, 133 N.W.2d 466 (1965).

Insurance carrier is directly liable to an accidentally injured employee of the insured. *Ramsey v. Kramer Motors, Inc.*, 155 Neb. 584, 52 N.W.2d 799 (1952).

Agreement made between employee and adjuster for the insurance company is not binding on employer so as to toll statute of limitations. *Hill v. Hinky-Dinky Stores Co.*, 133 Neb. 147, 274 N.W. 455 (1937).

Statute provides insurer and insured are jointly liable, and defenses, waived by voluntary appearance of insured, are ex-

tended to insurer. *Collins v. Casualty Reciprocal Exchange*, 123 Neb. 227, 242 N.W. 457 (1932).

Reasonable agreement by employer with injured employee binds insurance carrier. *Bailey v. United States Fidelity & Guaranty Co.*, 99 Neb. 109, 155 N.W. 237 (1915).

Notice to the insured-employer is binding on the insurer. *Snowden v. Helget Gas Products*, 15 Neb. App. 33, 721 N.W.2d 362 (2006).

2. Miscellaneous

Insurance company having written new policy is liable for entire loss even though notice of cancellation of former policy not filed within time limit set by rule of Workmen's Compensation Court. *Neeman v. Otoe County*, 186 Neb. 370, 183 N.W.2d 269 (1971).

Insurance carrier is a proper party defendant. *Peek v. Ayers Auto Supply*, 157 Neb. 363, 59 N.W.2d 564 (1953).

Agreement to pay compensation which was not approved by compensation commissioner or compensation court was void. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

The requirement contained in this section that each workers' compensation insurance policy covers all employees within the purview of the Nebraska Workers' Compensation Act overrides an insurance policy provision which excludes any such employee from coverage. *Kruuid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

48-146.01 Transferred to section 44-3,158.

48-146.02 Insurance provider; risk management pool; suspension or revocation of authority to provide compensation insurance; Attorney General; duties; grounds.

(1)(a) If a three-judge panel of the Nebraska Workers' Compensation Court finds, after due notice and hearing at which the workers' compensation insurer is entitled to be heard and present evidence, that such insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may request the Director of Insurance to suspend or revoke the authorization of such insurer to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such insurer under policies in force prior to the suspension or revocation.

(b) If a three-judge panel of the compensation court finds, after due notice and hearing at which the risk management pool is entitled to be heard and present evidence, that such pool has failed to comply with an obligation under the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 44-4319, with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

(c) If a three-judge panel of the compensation court finds, after due notice and hearing at which the self-insurer is entitled to be heard and present evidence, that such self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145. Such revocation shall not affect the liability of any such self-insurer under an approval by the compensation court to self-insure in force prior to the revocation.

(d) 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 workers' compensation insurer, risk management pool, or self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not take action pursuant to this subsection. 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 workers' compensation insurer, risk management pool, or self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct. 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.

(e) Appeal from an action by a three-judge panel of the compensation court pursuant to subdivision (1)(b) or (1)(c) of this section shall be in accordance with section 48-185.

(2) In addition to any other obligations under the Nebraska Workers' Compensation Act, the following acts or practices, when committed with such

frequency as to indicate a general business practice to engage in that type of conduct, shall subject the workers' compensation insurer, risk management pool, or self-insurer to action pursuant to subsection (1) of this section:

(a) Knowingly misrepresenting relevant facts or the provisions of the act or any rule or regulation adopted pursuant to such act;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under the act;

(c) Failing to promptly investigate claims arising under the act;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable payment of benefits when compensability has become reasonably clear;

(e) Refusing to pay benefits without conducting a reasonable investigation;

(f) Failing to affirm or deny compensability of a claim within a reasonable time after having completed the investigation related to such claim;

(g) Paying substantially less than amounts owed under the act where there is no reasonable controversy;

(h) Making payment to an injured employee, beneficiary of a deceased employee, or provider of medical, surgical, or hospital services without providing a reasonable and accurate explanation of the basis for the payment;

(i) Unreasonably delaying the investigation or payment of benefits by knowingly requiring excessive verification or duplication of information;

(j) Failing, in the case of the denial of compensability or the denial, change in, or termination of benefits, to promptly provide a reasonable and accurate explanation of the basis for such action to the injured employee or beneficiary of a deceased employee;

(k) Failing, in the case of the denial of payment for medical, surgical, or hospital services, to promptly provide a reasonable and accurate explanation of the basis for such action to the provider of such services; or

(l) Failing to provide the compensation court's address and telephone number to an injured employee or beneficiary of a deceased employee with instructions to contact the court for further information:

(i) At or near the time the workers' compensation insurer, risk management pool, or self-insurer receives notice or has knowledge of the injury; and

(ii) At or near the time of the denial of compensability or the denial, change in, or termination of benefits.

(3) In order to determine compliance with obligations under the Nebraska Workers' Compensation Act, the compensation court or its designee may examine the workers' compensation records of (a) a workers' compensation insurer, a risk management pool, or a self-insurer or (b) an adjuster, a third-party administrator, or other agent acting on behalf of such workers' compensation insurer, risk management pool, or self-insurer. The authority of the compensation court pursuant to this subsection is subject to the limitations provided under the work-product doctrine and attorney-client privilege as recognized in Nebraska law.

(4) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1971, LB 572, § 16; Laws 1986, LB 811, § 73; Laws 1987, LB 398, § 45; Laws 1999, LB 331, § 2; Laws 2005, LB 13, § 12.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

Risk management pool, defined, see section 44-4303.

48-146.03 Workers' compensation insurance policy; deductible options; exception; liability; insurer; duties; prohibited acts; violation; penalty.

(1) Each workers' compensation insurance policy issued by an insurer pursuant to the Nebraska Workers' Compensation Act:

(a) Shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of five hundred dollars to two thousand five hundred dollars per claim in increments of five hundred dollars; or

(b) May offer, at the option of the insured employer and the workers' compensation insurer, a deductible for all amounts paid by the insurer as long as the deductible is not more than forty percent of the insured employer's otherwise applicable annual workers' compensation insurance premium at rates approved for the insurer but not less than fifty thousand dollars.

The insured employer, if choosing to exercise one of such options listed in this subsection, may choose only one of the amounts as the deductible. The provisions of this section shall be fully disclosed to each prospective purchaser in writing.

(2) The deductible form shall provide that the workers' compensation insurer shall remain liable for and shall pay the entire cost of medical benefits for each claim directly to the medical provider, shall remain liable for and pay the entire cost of benefits, claims, and expenses as required by the policy irrespective of the deductible provision, and shall then be reimbursed by the employer for any deductible amounts paid by the workers' compensation insurer. The employer shall be liable for reimbursement up to the limit of the deductible.

(3) A workers' compensation insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the employer does not have the financial ability to be responsible for the payment of deductible amounts.

(4) A workers' compensation insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount, and shall make such reports to the compensation court of payments made, including payments made under the deductible provisions, as may be required by the compensation court.

(5) A person who is employed by a policyholder which chooses to exercise the option of a deductible policy shall not be required to pay any of the deductible amount, and any such policyholder shall not require or attempt to require the employee to give up his or her right of selection of physician set out in section 48-120. Any violation of this subsection shall be a Class II misdemeanor.

Source: Laws 1990, LB 313, § 2; Laws 1992, LB 1006, § 94; Laws 2005, LB 238, § 12.

48-147 Liability insurance; existing contract; effect of law; violations; penalty.

Nothing in the Nebraska Workers' Compensation Act shall affect any existing contract for employers liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement existing between employers and employees, providing for payment to such employees, their

families, dependents, or representatives, sick, accident, or death benefits in addition to the compensation provided for by such act; but liability for compensation under such act shall not be reduced or affected by any insurance of the injured employee, or any contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his or her own name in the manner provided in section 48-146 the liability of any insurer who may, in whole or in part, have insured the liability for such compensation. Payment in whole or in part of such compensation by either the employer or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid. No agreement by an employee to pay any portion of premium paid by his or her employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by the Nebraska Workers' Compensation Act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of such act shall be guilty of a Class II misdemeanor. Nothing in this section invalidates or prohibits agreements pursuant to subdivision (11) of section 48-115 or section 48-115.02.

Source: Laws 1913, c. 198, § 48, p. 600; R.S.1913, § 3689; C.S.1922, § 3071; C.S.1929, § 48-148; R.S.1943, § 48-147; Laws 1971, LB 572, § 10; Laws 1977, LB 40, § 273; Laws 1986, LB 811, § 74; Laws 1997, LB 474, § 6; Laws 1999, LB 216, § 11.

Pension benefits made under city ordinance did not affect the right of plaintiff to claim and receive under Workmen's Compensation Act. *Novotny v. City of Omaha*, 207 Neb. 535, 299 N.W.2d 757 (1980).

Receipt and acceptance of workmen's compensation does not bar city fireman from right to fireman's pension. *City of Lincoln v. Steffensmeyer*, 134 Neb. 613, 279 N.W. 272 (1938).

Widow of city fireman, who had received pension, was not barred thereby from claiming compensation for accidental

death. *Shandy v. City of Omaha*, 127 Neb. 406, 255 N.W. 477 (1934).

Payment of private insurance benefits, even if made pursuant to an employer-funded plan, does not entitle an employer to reduce an employee's benefits due under the Workers' Compensation Act. *Nunn v. Texaco Trading & Transp.*, 3 Neb. App. 101, 523 N.W.2d 705 (1994).

PART III

MISCELLANEOUS PROVISIONS

48-148 Compensation; action to recover; release of claim at law.

If any employee, or his or her dependents in case of death, of any employer subject to the Nebraska Workers' Compensation Act files any claim with, or accepts any payment from such employer, or from any insurance company carrying such risk, on account of personal injury, or makes any agreement, or submits any question to the Nebraska Workers' Compensation Court under such act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

Source: Laws 1913, c. 198, § 49, p. 600; R.S.1913, § 3690; C.S.1922, § 3072; C.S.1929, § 48-149; R.S.1943, § 48-148; Laws 1955, c. 186, § 5, p. 534; Laws 1986, LB 811, § 75.

1. Exclusive remedy
2. Indemnity
3. Miscellaneous

1. Exclusive remedy

Under this section, a surviving husband's claim for bystander negligent infliction of emotional distress against his deceased wife's employer was barred by the employer immunity provisions of the Nebraska Workers' Compensation Act because he accepted compensation from the employer as his deceased wife's dependent, he settled with and released the employer, and his claim arose from his deceased wife's injury as the phrase "arise from such injury" is used in this section. *Pittman v. Western Engineering Co.*, 283 Neb. 913, 813 N.W.2d 487 (2012).

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. *Hofferber v. City of Hastings*, 275 Neb. 503, 747 N.W.2d 389 (2008).

Section 48-111 and this section are routinely referred to by the Nebraska Supreme Court as the "exclusivity" provisions of the Nebraska Workers' Compensation Act. *Bennett v. Saint Elizabeth Health Sys.*, 273 Neb. 300, 729 N.W.2d 80 (2007).

The Nebraska Workers' Compensation Act is an employee's exclusive remedy against an employer when the employee's injury was both incurred "in the course of employment" and "arose out of employment". *Skinner v. Ogallala Pub. Sch. Dist. No. 1*, 262 Neb. 387, 631 N.W.2d 510 (2001).

The Workers' Compensation Act is an employee's exclusive remedy against an employer for an injury arising out of and in the course of employment. *Tompkins v. Raines*, 247 Neb. 764, 530 N.W.2d 244 (1995).

2. Indemnity

When an employer, liable to an employee under the Nebraska Workers' Compensation Act, agrees to indemnify a third party for a loss sustained as the result of the third party's payment to the indemnitor's employee, the employer's exclusion from liability accorded by the Workers' Compensation Act does not preclude the third party's action to enforce the indemnity agreement with the indemnitor-employer. *Jacobs Engr. Group v. ConAgra Foods*, 301 Neb. 38, 917 N.W.2d 435 (2018); *Oddo v. Speedway Scaffold Co.*, 233 Neb. 1, 443 N.W.2d 596 (1989); *Union Pacific R. R. Co. v. Kaiser Ag. Chem. Co.*, 229 Neb. 160, 425 N.W.2d 872 (1988).

Workmen's Compensation Act bars action by third party tortfeasor against employer for contribution or indemnity based on claim arising from the injury. *Vangreen v. Interstate Machinery & Supply Co.*, 197 Neb. 29, 246 N.W.2d 652 (1976).

3. Miscellaneous

Nebraska does not recognize an exception that would allow a third party to seek contribution from an employer when it is alleged that the employer acted intentionally. *Harsh International v. Monfort Indus.*, 266 Neb. 82, 662 N.W.2d 574 (2003).

If a person files a claim against his employer in the Workmen's Compensation Court for an injury which did not arise out of and in the course of his employment, he does not thereby release his employer from liability for a tort. *Marlow v. Maple Manor Apartments*, 193 Neb. 654, 228 N.W.2d 303 (1975).

Employee's acceptance of benefits under Workmen's Compensation Act ordinarily constitutes release to employer of claims at law arising from the injury. *Edelman v. Ralph Printing & Lithographing, Inc.*, 189 Neb. 763, 205 N.W.2d 340 (1973).

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.

48-149 Compensation payments; nonassignable; not subject to attachment; exceptions.

No proceeds or interest thereon from payments or lump-sum settlements under the Nebraska Workers' Compensation Act or law of another state which provides compensation and benefits for employees sustaining job-related injuries shall be assignable, subject to attachment or garnishment, or held liable in any way for any debts, except (1) as provided in section 48-108 and (2) payments under the act or any law of another state which provides compensation and benefits for employees sustaining job-related injuries shall be subject to income withholding under the Income Withholding for Child Support Act, administrative attachment and bank matching pursuant to sections 43-3328 to 43-3339, and garnishment by a county attorney or authorized attorney pursuant to section 43-512.03 or garnishment for child support as defined in section 43-1705 by an obligee as defined in section 43-1713.

Source: Laws 1913, c. 198, § 50, p. 600; R.S.1913, § 3691; C.S.1922, § 3073; C.S.1929, § 48-150; R.S.1943, § 48-149; Laws 1986, LB 811, § 76; Laws 1993, LB 523, § 24; Laws 1993, LB 118, § 2; Laws 1997, LB 752, § 124.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

48-150 Compensation claims; same preference as wage claims.

The right to compensation and all compensation awarded any injured employee or for death claims to his or her dependents in any amount shall have the same preference against the assets of the employer as unpaid wages for labor, but such compensation shall not become a lien on the property of third persons by reason of such preference.

Source: Laws 1913, c. 198, § 51, p. 600; R.S.1913, § 3692; C.S.1922, § 3074; C.S.1929, § 48-151; R.S.1943, § 48-150; Laws 1986, LB 811, § 77.

48-151 Terms, defined.

Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) Occupational disease means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed;

(4) Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom and personal injuries described in section 48-101.01. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their

service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer’s agent;

(8) Intoxication includes, but is not limited to, being under the influence of a controlled substance not prescribed by a physician;

(9) Prospective loss costs means prospective loss costs as defined in section 44-7504 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-7518;

(10) Client means client as defined in section 48-2702;

(11) Professional employer organization means professional employer organization as defined in section 48-2702;

(12) Multiple coordinated policy means multiple coordinated policy as defined in section 48-2702;

(13) Master policy means master policy as defined in section 48-2702; and

(14) Whenever in the Nebraska Workers’ Compensation Act the singular is used, the plural is considered included; when the masculine gender is used, the feminine is considered included.

Source: Laws 1913, c. 198, § 52, p. 601; R.S.1913, § 3693; Laws 1917, c. 85, § 23, p. 216; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3075; C.S.1929, § 48-152; Laws 1935, c. 57, § 42, p. 211; Laws 1937, c. 107, § 1, p. 367; C.S.Supp.,1941, § 48-152; Laws 1943, c. 113, § 3, p. 398; R.S.1943, § 48-151; Laws 1947, c. 174, § 2, p. 560; Laws 1963, c. 284, § 3, p. 852; Laws 1963, c. 287, § 1, p. 862; Laws 1986, LB 811, § 78; Laws 1993, LB 757, § 15; Laws 1998, LB 1010, § 4; Laws 1999, LB 216, § 12; Laws 2000, LB 1119, § 40; Laws 2010, LB579, § 18; Laws 2010, LB780, § 2.

- 1. Accident
- 2. Injury and personal injuries
- 3. Arising out of and in course of employment
- 4. Reckless indifference to safety
- 5. Willful negligence
- 6. Miscellaneous

1. Accident

An employee’s death from asphyxiation, after entering a grain bin at his workplace in violation of safety regulations and then becoming engulfed in grain, was the result of an “accident” covered by the exclusive jurisdiction of the Nebraska Workers’ Compensation Act, even though the employer willfully violated the Occupational Safety and Health Administration regulations. *Estate of Teague v. Crossroads Co-op Assn.*, 286 Neb. 1, 834 N.W.2d 236 (2013).

A worker’s noise-induced hearing loss is a condition resulting from the cumulative effects of work-related trauma, tested under the statutory definition of accident. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

An injured worker must satisfy three elements to prove an injury is the result of an accident: (1) The injury must be

unexpected or unforeseen, (2) the accident must happen suddenly and violently, and (3) the accident must produce at the time objective symptoms of injury. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

The compensability of a condition resulting from the cumulative effects of work-related trauma is tested under the statutory definition of accident. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

The “suddenly and violently” component of an “accident” does not mean instantaneously and with force; instead, the element is satisfied if the injury occurs at an identifiable point in time, requiring the employee to discontinue employment and seek medical treatment. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

An injury caused by a mental stimulus does not meet the requirement that a compensable accidental injury involve violence to the physical structure of the body. *Zach v. Nebraska State Patrol*, 273 Neb. 1, 727 N.W.2d 206 (2007).

The compensability of a condition resulting from the cumulative effects of work-related trauma is to be tested under the statutory definition of accident. For purposes of this section, "suddenly and violently" does not mean instantaneously and with force, but, rather, the element is satisfied if the injury occurs at an identifiable point in time requiring the employee to discontinue employment and seek medical treatment. For purposes of this section, the time of an accident is sufficiently definite, for purposes of proving that an accident happened "suddenly and violently," if either the cause is reasonably limited in time or the result materializes at an identifiable point. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

While cumulative effects of repeated work-related trauma have characteristics of both accidental injury and occupational disease, generally the compensability of such a condition is tested under the statutory definition of accident. The "unexpected or unforeseen" requirement of subsection (2) of this section is satisfied if either the cause was of an accidental character or the effect was unexpected or unforeseen. "Suddenly and violently" does not mean instantaneously and with force, but, rather, the element is satisfied if the injury occurs at an identifiable point in time requiring the employee to discontinue employment and seek medical treatment. Where employee returned to work, but did not resume the duties which led to his injury, but instead was transferred to a position requiring less strenuous activity, evidence was sufficient to support finding that injury occurred "suddenly and violently". The third statutory requirement under subsection (2) of this section, that the accident produced objective symptoms, is satisfied if the symptoms manifest themselves according to the natural course of such things without any independent intervening cause. In a workers' compensation case, the plaintiff must establish by a preponderance of the evidence that the injury for which an award is sought arose out of and in the course of employment. If the nature and effect of a claimant's injury are not plainly apparent, then the claimant must provide expert medical testimony showing a causal connection between the injury and the claimed disability. Although expert medical testimony need not be couched in the magic words "reasonable medical certainty" or "reasonable probability", it must be sufficient as examined in its entirety to establish the crucial causal link between the plaintiff's injuries and the accident occurring in the course and scope of the worker's employment. *Owen v. American Hydraulics, Inc.*, 258 Neb. 881, 606 N.W.2d 470 (2000).

The compensability of a condition resulting from the cumulative effects of repeated work-related trauma is to be tested under the statutory definition of accident. *Frank v. A & L Insulation*, 256 Neb. 898, 594 N.W.2d 586 (1999).

Pursuant to subsection (2) of this section, negligent medical treatment at an employer's first-aid medical facility, by a trained and qualified professional upon a coemployee, may constitute an "accident" as defined in the Nebraska Workers' Compensation Act upon proof and a finding of such facts. *Winn v. Geo. A. Hormel & Co.*, 252 Neb. 29, 560 N.W.2d 143 (1997).

An accident is defined as "an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury." The "unexpected or unforeseen" requirement of subsection (2) of this section is satisfied if either the cause was of an accidental character or the effect was unexpected or unforeseen. *Schlup v. Auburn Needleworks*, 239 Neb. 854, 479 N.W.2d 490 (1992).

In order to have been the result of an "accident" as defined by this section, an injury must have been unexpected or unforeseen, have occurred suddenly and violently, and have produced objective symptoms. The objective symptoms required by subsection (2) of this section exist either where the nature and effect of the injury are plainly apparent or where there is expert testimony showing a causal connection between the injury and the claimed disability. *Catlin v. Prairie Marketing*, 239 Neb. 363, 476 N.W.2d 675 (1991).

The cumulative effects of repeated work-related trauma which do not, at an identifiable moment, produce objective symptoms requiring, within a reasonably limited period of time, medical attention and the interruption or discontinuance of employment are not the product of an accidental injury within the purview of subsection (2) of this section. The compensability of a condition resulting from the cumulative effects of repeated work-related trauma is to be tested under the definition of an accident contained in subsection (2) of this section. *Vencil v. Valmont*, 239 Neb. 31, 473 N.W.2d 409 (1991).

The cumulative effects of repeated work-related trauma which do not at an identifiable moment produce objective symptoms requiring, within a reasonably limited period of time, medical attention and the interruption or discontinuance of employment are not the product of an accidental injury within the purview of subsection (2) of this section. *Maxson v. Michael Todd & Co.*, 238 Neb. 209, 469 N.W.2d 542 (1991).

Where an injury is the result of mental stimulus, in order for it to be compensable under the Nebraska workers' compensation law, the injured party must prove an unexpected or unforeseen event, happening suddenly and violently and producing at the time objective symptoms of injury and violence to the physical structure of the body. *Sorensen v. City of Omaha*, 230 Neb. 286, 430 N.W.2d 696 (1988).

Onset of pronator teres syndrome and carpal tunnel syndrome was an accident within meaning of statute and sufficient evidence was produced to prove causation. *Masters v. Iowa Beef Processors*, 220 Neb. 835, 374 N.W.2d 21 (1985).

The "unexpected or unforeseen" requirement is satisfied if either the cause was of an accidental character or the effect was unexpected or unforeseen. The "suddenly and violently" element does not mean instantaneously and with force, but instead means at an identifiable point in time requiring the employee to discontinue employment and seek medical treatment. *McLaughlin v. Self-Insurance Servs.*, 219 Neb. 260, 361 N.W.2d 585 (1985).

The requirement that an accident occur suddenly and violently does not mean that it occur instantaneously but is satisfied if the injury occurs at some identifiable point in time, requiring the employee to discontinue employment and seek medical treatment. Trauma to the body may be caused by action other than direct blows and it may occur inside the body. In proving that an injury was caused by accident, an employee must prove three separate elements. *Sandel v. Packaging Co. of America*, 211 Neb. 149, 317 N.W.2d 910 (1982).

The accident requirement of the act is satisfied if the cause of the injury was of accidental character or the effect was unexpected or unforeseen, and happened suddenly and violently; and, furthermore, it is no longer necessary that the injury be caused by a single traumatic event, but the exertion in the employment must contribute in some material and substantial degree to cause the injury. The term "arising out of" describes the accident and its origin, cause, and character, i.e., whether it resulted from the risks arising within the scope or sphere of the employee's job, while the term "in the course of" refers to the time, place, and circumstances surrounding the accident, and these two phrases are conjunctive and the claimant must establish by a preponderance of the evidence that both conditions exist. *Union Packing Co. v. Klauschie*, 210 Neb. 331, 314 N.W.2d 25 (1982).

The fact that one may experience pain during employment does not in and of itself prove that the employee is disabled as a result of an accident arising out of and in the course of one's employment. Therefore, where the nature and effect of one's injury is not plainly apparent, it is a subjective condition requiring expert testimony, and an award based solely on the injured employee's testimony, absent objective evidence that an accident within the meaning of the act has occurred, cannot stand. *Mack v. Dale Electronics, Inc.*, 209 Neb. 367, 307 N.W.2d 814 (1981).

Where the claimant's condition satisfied the requirements both of an injury and of an occupational disease, the workmen's compensation court's finding that an accident occurred was affirmed. *Crosby v. American Stores*, 207 Neb. 251, 298 N.W.2d 157 (1980).

By accident requirement satisfied either if cause was of an accidental character, or if effect was unexpected or unforeseen and happened suddenly and violently. *Brokaw v. Robinson*, 183 Neb. 760, 164 N.W.2d 461 (1969).

Fall from a ladder constituted an accident arising out of and in the course of employment. *Wheeler v. Northwestern Metal Co.*, 175 Neb. 841, 124 N.W.2d 377 (1963).

Mere exertion incident to occupation does not of itself constitute an accident. *Pruitt v. McMaken Transp. Co.*, 175 Neb. 477, 122 N.W.2d 236 (1963).

Mere exertion, which is no greater than that ordinarily incident to the employment, does not of itself constitute an accident. *Green v. Benson Transfer Co.*, 173 Neb. 226, 113 N.W.2d 61 (1962).

Injury sustained by employee through slipping on ice on public sidewalk was not compensable. *Acton v. Wymore School Dist.* No. 114, 172 Neb. 609, 111 N.W.2d 368 (1961).

Ordinary exertion, combined with preexisting disease, is not compensable. *Hladky v. Omaha Body & Equipment Co.*, 172 Neb. 197, 109 N.W.2d 111 (1961).

To sustain an award under the Workmen's Compensation Act, there must be shown a causal connection between an accident suffered by claimant and his disability. *Tilghman v. Mills*, 169 Neb. 665, 100 N.W.2d 739 (1960); *Feagins v. Carver*, 162 Neb. 116, 75 N.W.2d 379 (1956).

To constitute accident, there must be an unexpected and unforeseen event that happened suddenly and violently. *Schanhols v. Scottsbluff Bean & Elevator Co.*, 168 Neb. 626, 97 N.W.2d 220 (1959).

Symptoms of pain and anguish may constitute objective symptoms within requirements of act. *Pittenger v. Safeway Stores, Inc.*, 166 Neb. 858, 91 N.W.2d 31 (1958); *Knudsen v. McNeely*, 159 Neb. 227, 66 N.W.2d 412 (1954); *Anderson v. Cowger*, 158 Neb. 772, 65 N.W.2d 51 (1954).

Evidence was insufficient to show that death from coronary thrombosis was result of accident. *Eschenbrenner v. Employers Mutual Casualty Co.*, 165 Neb. 32, 84 N.W.2d 169 (1957).

Mere exertion which is no greater than that ordinarily incident to the employment cannot of itself constitute an accident. *Jones v. Yankee Hill Brick Mfg. Co.*, 161 Neb. 404, 73 N.W.2d 394 (1955).

Injury sustained while lifting gas range was accident. *Gilbert v. Metropolitan Utilities Dist.*, 156 Neb. 750, 57 N.W.2d 770 (1953).

Accident requires objective symptoms of an injury. *Hahl v. Heyne*, 156 Neb. 599, 57 N.W.2d 137 (1953).

Burden rests upon claimant to prove injury was caused by an accident as defined in this section. *Tucker v. Paxton & Gallagher Co.*, 153 Neb. 1, 43 N.W.2d 522 (1950).

In absence of objective symptoms of an injury, mere exertion ordinarily incident to employment does not of itself constitute an accidental injury. *Muff v. Brainard*, 150 Neb. 650, 35 N.W.2d 597 (1949).

An accident within this act is an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. *Schwabauer v. State*, 147 Neb. 620, 24 N.W.2d 431 (1946).

Where objective symptoms of a ruptured gall bladder were not present, recovery could not be had upon theory that accident aggravated chronic gall bladder disease. *Hassmann v. City of Bloomfield*, 146 Neb. 608, 20 N.W.2d 592 (1945).

Compensation may be allowed for neurosis if it is a proximate result of injury and results in disability. *Lee v. Lincoln Cleaning & Dye Works*, 145 Neb. 124, 15 N.W.2d 330 (1944).

Evidence that employee suffering from arteriosclerosis felt sharp pain in eye while moving a bench, and lost sight shortly thereafter, did not prove a compensable accidental injury. *Roccaforte v. State Furniture Co.*, 142 Neb. 768, 7 N.W.2d 656 (1943).

Where employee was cranking a car, which was ordinarily incident to his employment, and no unforeseen or unexpected event happened suddenly or violently, a compensable accidental injury did not occur even though the exertion, combined with preexisting disease, produced disability. *Rose v. City of Fairmont*, 140 Neb. 550, 300 N.W. 574 (1941).

The word accident as used in the statute shall, unless a different meaning is clearly indicated from context, be construed to mean an unexpected or unforeseen event happening suddenly or violently with or without human fault and producing at the time objective symptoms of the injury. *Shamp v. Landy Clark Co.*, 134 Neb. 73, 277 N.W. 802 (1938).

Trivial accidents which did not aggravate or affect progress of an occupational disease cannot be made basis for recovery. *Svoboda v. Mandler*, 133 Neb. 433, 275 N.W. 599 (1937).

Slipping and falling into river, from which employee is alleged to have caught cold, is not an accident within definition of the statute. *Lang v. Gage County Electric Co.*, 133 Neb. 388, 275 N.W. 462 (1937).

Being shot by a highwayman while traveling in course of employment is an accident within meaning of the statute. *Goodwin v. Omaha Printing Co.*, 131 Neb. 212, 267 N.W. 419 (1936).

Snow blindness is an accident within meaning of compensation law. *Hayes v. McMullen*, 128 Neb. 432, 259 N.W. 165 (1935).

Definition of accident is quoted from this section in opinion relating to case where injury and preexisting disease combined to produce disability. *Skelly Oil Co. v. Gaugenbaugh*, 119 Neb. 698, 230 N.W. 688 (1930).

Death of employee was the result of accident. *Kanscheit v. Garrett Laundry Co.*, 101 Neb. 702, 164 N.W. 708 (1917); *Young v. Western Furniture & Mfg. Co.*, 101 Neb. 696, 164 N.W. 712 (1917).

Injury was result of accident. *Manning v. Pomerene*, 101 Neb. 127, 162 N.W. 492 (1917).

2. Injury and personal injuries

Under the definition of occupational disease, the unique condition of the employment must result in a hazard which distinguishes it in character from employment generally. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

A compensable injury caused by an occupational disease must involve some physical stimulus constituting violence to the physical structure of the body. *Zach v. Nebraska State Patrol*, 273 Neb. 1, 727 N.W.2d 206 (2007).

A worker becomes disabled, and thus injured, from an occupational disease at the point in time when a permanent medical impairment or medically assessed work restrictions result in labor market access loss. *Ludwick v. TriWest Healthcare Alliance*, 267 Neb. 887, 678 N.W.2d 517 (2004).

An exertion-or stress-caused heart injury to which the claimant's preexisting heart disease or condition contributes is compensable only if the claimant shows that the exertion or stress encountered during employment is greater than that experienced during the ordinary nonemployment life of the employee or any other person. While legal cause is established by satisfying the "stress greater than nonemployment life" test, a claimant must still demonstrate medical causation. If it is claimed that an injury was the result of stress or exertion in the employment, medical causation is established by a showing of the preponderance of the evidence that the employment contributed in some material and substantial degree to cause the injury. *Leitz v. Roberts Dairy*, 237 Neb. 235, 465 N.W.2d 601 (1991).

The terms "injury" and "personal injuries" do not include disability or death due to natural causes but occurring while the employee is at work, nor an injury, disability, or death that is the result of a natural progression of any preexisting condition. *Chrisman v. Greyhound Bus Lines, Inc.*, 208 Neb. 6, 301 N.W.2d 595 (1981).

Personal injury does not include disability or death from natural causes or the result of a natural progression of a

preexisting condition. *Hyatt v. Kay Windsor, Inc.*, 198 Neb. 580, 254 N.W.2d 92 (1977).

Plaintiff did not sustain burden of proof that perforated ulcer was in fact caused by the employment. *Cook v. Christensen Sand & Gravel Co.*, 183 Neb. 602, 163 N.W.2d 105 (1968).

Where plaintiff failed to show objective symptoms of an injury, compensation was properly denied. *Skalak v. County of Seward*, 174 Neb. 659, 119 N.W.2d 43 (1963).

Disability caused by combination of injury and preexisting disease is compensable. *Hagler v. Jensen*, 173 Neb. 699, 114 N.W.2d 755 (1962).

Term injury includes disablement from occupational disease. *Hauff v. Kimball*, 163 Neb. 55, 77 N.W.2d 683 (1956).

Hernia resulting from ordinary lifting was not compensable. *Foster v. Atlas Lumber Co.*, 155 Neb. 129, 50 N.W.2d 637 (1952).

Where there is a lack of evidence of violence to the physical structure of the body, an award of compensation will not be sustained. *Mook v. City of Lincoln*, 143 Neb. 254, 9 N.W.2d 184 (1943).

Plaintiff failed to establish that inhaling of sewer gas was cause of pneumonia which afflicted deceased. *Kaffenberger v. Iverson*, 142 Neb. 257, 5 N.W.2d 687 (1942).

Claim under Workmen's Compensation Act is not sustainable unless accomplished by violence to the physical structure of the body of the claimant. *Bekelski v. Neal Co.*, 141 Neb. 657, 4 N.W.2d 741 (1942).

Where a public employee of a city suffered serious accidental injury to back of his head which lowered his resistance to infection so that a few days thereafter he died of lobar pneumonia, his death followed the accident with reasonable certainty. *Hendershot v. City of Lincoln*, 136 Neb. 606, 286 N.W. 909 (1936).

The disease of echinococcosis is not an occupational disease incident to the employment of a beef washer, and question of whether it could be incurred as the result of accident was not determined. *Russo v. Swift & Co.*, 136 Neb. 406, 286 N.W. 291 (1939).

Evidence failed to establish that claimant contracted eczema while telephone operator from use of unsterilized headset. *McCall v. Hamilton County Farmers Telephone Assn.*, 135 Neb. 70, 280 N.W. 254 (1938).

Term injury does not include occupational or infectious disease contracted during course of employment. *Park v. School District No. 27, Richardson Cty.*, 127 Neb. 767, 257 N.W. 219 (1934).

The terms injury and personal injuries mean violence to the physical structure of the body and such disease or infection as may naturally result therefrom. *Greseck v. Farmers Union Elevator Co.*, 123 Neb. 755, 243 N.W. 898 (1932).

Under the Nebraska Workers' Compensation Act, an injury has occurred as the result of an occupational disease when violence has been done to the physical structure of the body and a disability has resulted. *Moyers v. International Paper Co.*, 25 Neb. App. 282, 905 N.W.2d 87 (2017).

3. Arising out of and in course of employment

Under subsection (2) of this section, to sustain an award in a workers' compensation case involving a preexisting disease or condition, a claimant must prove that the injury which is the basis for the claim arose out of and in the course of employment and that the preexisting disease or condition combined with the work-related injury to produce disability, or that the work-related injury aggravated, accelerated, or inflamed the preexisting condition. *Tarvin v. Mutual of Omaha Ins. Co.*, 238 Neb. 851, 472 N.W.2d 727 (1991).

Under subsection (2) of this section, an enhanced degree of proof, establishing a cause-and-effect relationship between a work-related injury and consequent disability, is not among claimant's burdens for obtaining an award of compensation.

Clobes v. Nebraska Boxed Beef, 238 Neb. 612, 472 N.W.2d 893 (1991).

There is no presumption from the mere occurrence of an unexpected or unforeseen injury that the injury was in fact caused by employment. *Gilbert v. Sioux City Foundry*, 228 Neb. 379, 422 N.W.2d 367 (1988).

Under subsection (4) of this section, a disability that is due to natural causes is not compensable under the workers' compensation law. This is true even though the disability occurs while the employee is at work. But, if there is a preexisting occupational disease, then the employer is liable, but only for the degree of aggravation of the preexisting occupational disease. *Gilbert v. Sioux City Foundry*, 228 Neb. 379, 422 N.W.2d 367 (1988).

Evidence indicating that carpal tunnel syndrome was manifested according to the natural course of such matters and that it was caused by the repeated squeezing of a crimping device required by the employment was sufficient to support the award made by the compensation court. *Erving v. Tri-Con Industries*, 210 Neb. 339, 314 N.W.2d 253 (1982).

The compensation act extends to and covers workmen only while engaged in, on, or about the premises where their duties are being performed, or where their service requires their presence as a part of such service at the time of injury, and during the hours of service of such workmen. *Rowan v. University of Nebraska*, 207 Neb. 588, 299 N.W.2d 774 (1980).

Plaintiff's husband died of a heart attack while working but death did not arise out of the employment and, therefore, the Workmen's Compensation Court was correct in refusing compensation. *Sellens v. Allen Products Co., Inc.*, 206 Neb. 506, 293 N.W.2d 415 (1980).

An employee who suffered back pain approximately one-half hour after doing heavy lifting suffered an injury arising out of and in the course of her employment and is entitled to workmen's compensation. Disability is defined in terms of employability and earning capacity rather than bodily function. Thus, one who is in constant pain, unable to lift anything, and whose condition is aggravated by prolonged sitting or standing may be totally disabled. *Wolfe v. American Community Stores*, 205 Neb. 763, 290 N.W.2d 195 (1980).

Proof of gradual development of neckache while at work did not meet requirement that claimant prove disability was an accident or that it was caused by his employment. *Eliker v. D.H. Merritt & Sons*, 195 Neb. 154, 237 N.W.2d 130 (1975).

An injury, to be the basis of a cause of action under the Workmen's Compensation Act, must be caused by an accident arising out of and in the course of the employment. *Reis v. Douglas County Hospital*, 193 Neb. 542, 227 N.W.2d 879 (1975).

Injury to plaintiff resulting from donation of blood to Red Cross did not arise out of nor in course of employment although employer gave employees time off without loss of pay to participate in program. *Mausser v. Douglas & Lomason Co.*, 192 Neb. 421, 222 N.W.2d 119 (1974).

Under the Workmen's Compensation Act, recreational or social activities are within the course of employment when the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life. *Adler v. Jerryco Motors, Inc.*, 187 Neb. 757, 193 N.W.2d 757 (1972).

Where conditions of employment environment accentuated natural hazard, which increased hazard contributed to injury, the injury arose out of the employment and is compensable. *Ingram v. Bradley*, 183 Neb. 692, 163 N.W.2d 875 (1969).

The term arising out of the employment covers all risks of accident from causative acts done or occurring within the scope or sphere of the employment. *Chrisman v. Farmers Coop Assn.*, 179 Neb. 891, 140 N.W.2d 809 (1966).

Employee killed at railroad crossing was not shown to be acting in the course of his employment. *Oline v. Nebraska Nat. Gas Co.*, 177 Neb. 851, 131 N.W.2d 410 (1964).

Where a salesman was injured at a time when and a place where his services were not required to be performed, he was not within protection of Workmen's Compensation Act. *McDuffee v. Seiler Surgical Co., Inc.*, 172 Neb. 325, 109 N.W.2d 384 (1961).

An occupational disease must be due to causes and conditions which are characteristic of and peculiar to the employment. *Brown v. Armour & Co.*, 168 Neb. 835, 97 N.W.2d 342 (1959).

Where employee was injured at entrance to place of employment, injury arose in course of employment. *Fidelity & Casualty Co. v. Kennard*, 162 Neb. 220, 75 N.W.2d 553 (1956).

Burden rests on claimant to show personal injury arising out of and in the course of employment. *Chiles v. Cudahy Packing Co.*, 158 Neb. 713, 64 N.W.2d 459 (1954).

Where objective symptom of an injury was not shown, death from coronary heart disease was not compensable. *Ruderman v. Forman Bros.*, 157 Neb. 605, 60 N.W.2d 658 (1953).

Employees are not protected while absent from place of employment for lunch. *Berry v. School District*, 154 Neb. 787, 49 N.W.2d 617 (1951).

Volunteer fireman who slipped in kitchen of his own home and sustained injury was not entitled to compensation, since fall did not result from a risk connected with the employment. *Henry v. Village of Coleridge*, 147 Neb. 686, 24 N.W.2d 922 (1946).

Where employee, at time of accident, was not on premises of employer or where service for employer required him to be, and accident did not occur during the hours of service, recovery could not be had under act. *Nelms v. Mahoney*, 147 Neb. 626, 24 N.W.2d 558 (1946).

If an employee suffers an accident and is injured while going to or from work, from or to his home, the accident does not arise out of and in the course of his employment. *Lincoln Traction Company v. Reason*, 143 Neb. 512, 10 N.W.2d 344 (1943).

Injury is not compensable where police officer, after reporting off duty and having no special assignment and while on his way home from work, was struck by automobile. *Baughman v. City of Omaha*, 142 Neb. 663, 7 N.W.2d 365 (1943).

An injury to an employee on way home after work does not arise out of or in the course of employment, whether the employee works regular hours or is subject to call by the employer. *Richtarik v. Bors*, 142 Neb. 226, 5 N.W.2d 199 (1942).

Workmen's Compensation Act extends to and covers only workmen while working on premises where their duties are to be performed, or where their service requires their presence at the time of the injury. *Luke v. St. Paul Mercury Indemnity Co.*, 140 Neb. 557, 300 N.W. 577 (1941).

Workmen who, on their own initiative, leave their line of duty for purposes of their own are not protected by Workmen's Compensation Act. *Burlage v. Lefebure Corporation*, 137 Neb. 671, 291 N.W. 100 (1940).

Where an employee breaks the continuity of his employment and is injured before he brings himself back into the line of his employment, the injury does not arise out of and in the course of his employment. *Bell v. Denton*, 136 Neb. 23, 284 N.W. 751 (1939).

If employee is injured while using a dangerous instrument without permission of its owner, for a purpose for which it was not designed, outside of place of his employment, the owner is not liable therefore, unless instrument was used with the acquiescence, or at least the knowledge, of the employer. *Albers v. Kipp*, 130 Neb. 46, 263 N.W. 593 (1935).

An injury caused by slipping on ice on the public sidewalk in front of employer's store at noon hour, when employee was leaving for lunch and for a personal errand, does not arise out of and in course of employment. *De Porte v. State Furniture Co.*, 129 Neb. 282, 261 N.W. 419 (1935).

Where employee leaves place where his duties are to be performed to engage in personal objective not incidental to employment, the relation of employer and employee ceases until he returns to place where he is required to perform services. *McNaught v. Standard Oil Co.*, 128 Neb. 517, 259 N.W. 517 (1935).

Where employee abandons his job and takes another and while going to get his tools from old job is killed, recovery cannot be had from former employer where he was under no obligation in connection with return of tools. *Hammond v. Keim*, 128 Neb. 310, 258 N.W. 478 (1935).

Compensable injury can only arise while workman is engaged in or about premises where his duties are being performed, or where they require his presence. *Kirkpatrick v. Chocolate Sales Corporation*, 127 Neb. 604, 256 N.W. 89 (1934); *Hall v. Austin Western Road Machinery Co.*, 125 Neb. 390, 250 N.W. 258 (1933).

Where employee was killed accidentally while engaged in aiding fellow workman who was accomplishing private purpose, injury did not arise out of employment. *Bergantzel v. Union Transfer Co.*, 124 Neb. 200, 245 N.W. 593 (1932).

Injury to employee while going to work is not compensable hereunder. *Siedlik v. Swift & Co.*, 122 Neb. 99, 239 N.W. 466 (1931).

Where truck driver was injured when repairing truck during afternoon when not reporting to work, he was not entitled to compensation since accident did not arise in course of his employment. *Pappas v. Yant Construction Co.*, 121 Neb. 766, 238 N.W. 531 (1931).

Where workman engaged in dragging roads for county was injured by horse while caring for it during noon hour, accident arose out of and in course of employment and was compensable hereunder. *Speas v. Boone County*, 119 Neb. 58, 227 N.W. 87 (1929).

Where the actual fracture of an employee's hip occurred outside the scope of employment but the final displacement of the fracture occurred on her employer's premises, there was no injury that "arose out of" employment and no evidence that an employment risk caused the hip fracture to displace. *Carter v. Becton-Dickinson*, 8 Neb. App. 900, 603 N.W.2d 469 (1999).

4. Reckless indifference to safety

Reckless indifference to safety as used in statute means more than ordinary want of care, and implies a rash and reckless spirit approximating wantonness in a degree, and a willingness to take a chance. *Richards v. Abts*, 135 Neb. 347, 281 N.W. 611 (1938).

Reckless indifference to safety means more than want of ordinary care, implies rash and careless spirit, approximating but not necessarily wantonness. *Farmers Grain & Supply Co. v. Blanchard*, 104 Neb. 637, 178 N.W. 257 (1920).

Plaintiff employee's conduct did not evidence reckless indifference to safety or willful negligence. *Brown v. York Water Co.*, 104 Neb. 516, 177 N.W. 833 (1920).

5. Willful negligence

Absent extraordinary circumstances, such as when the evidence shows that the suicide was nonvoluntary, suicide constitutes willful negligence under this section. *Eddy v. Builders Supply Co.*, 304 Neb. 804, 937 N.W.2d 198 (2020).

The fact that an employee knew he was committing suicide will not, in all cases, constitute willful negligence. *Friedeman v. State*, 215 Neb. 413, 339 N.W.2d 67 (1983).

Willful negligence implies deliberate conduct evidencing reckless indifference to safety. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Participant in fight was not willfully negligent. *Myszkowski v. Wilson & Co., Inc.*, 155 Neb. 714, 53 N.W.2d 203 (1952).

Willful negligence means deliberate act and implies conduct evidencing reckless indifference to safety. *Schroeder v. Sharp*, 153 Neb. 73, 43 N.W.2d 572 (1950).

Fact that injured workman sprayed water on burning oil transport did not show deliberate act constituting willful negligence. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Whether plaintiff employee's conduct evidenced willful negligence, while probable, was not decided because accident was not in course of employment. *Feda v. Cudahy Packing Co.*, 102 Neb. 110, 166 N.W. 190 (1918).

A "deliberate act" as referenced in subdivision (7) of this section refers to an employee's deliberate injury of himself or herself. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

Pursuant to subdivision (7) of this section, an employee's violation of an employer's safety rule must be intentional in order for that employee to be held willfully negligent. *Spaulding v. Alliant Foodservice*, 13 Neb. App. 99, 689 N.W.2d 593 (2004).

6. Miscellaneous

A job transfer can constitute a discontinuance of work that establishes the date of injury resulting from an accident under the Nebraska Workers' Compensation Act. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

An employee establishes an identifiable point in time when a repetitive trauma injury occurs if the employee stops work and seeks medical treatment. The law does not establish a minimum time that an employee must discontinue work for medical treatment to be eligible for benefits. The length of time is not the controlling factor. *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

Pursuant to subsection (2) of this section, the law does not establish a minimum amount of time which must be missed from work for medical treatment in order for an employee to be eligible for workers' compensation benefits. The law requires only that the employee stop work and seek medical treatment. *Vonderschmidt v. Sur-Gro and Tri-State Ins. Co. of Minnesota*, 262 Neb. 551, 635 N.W.2d 405 (2001).

The terms "trade," "occupation," "process," or "employment" used in subsection (3) of this section refer not to the specific employer of the injured employee, but, rather, to employers as a whole in a particular occupation. *Berggren v. Grand Island Accessories*, 249 Neb. 789, 545 N.W.2d 727 (1996).

A disease aggravated by conditions characteristic of and peculiar to a particular employment is compensable. A preexisting disease and an aggravation of that disease may combine to produce a compensable injury. The preexisting disease need not be occupational. *Miller v. Goodyear Tire & Rubber Co.*, 239 Neb. 1014, 480 N.W.2d 162 (1992).

Under subsection (4) of this section, an employee may recover for a new injury or aggravation of an injury resulting from medical or surgical treatment if an intervening independent cause does not break the chain of causation between the employee's original injury and the new or aggravated injury. *Roan Eagle v. State*, 237 Neb. 961, 468 N.W.2d 382 (1991).

This court has expressly disapproved of language in previous opinions which imposed an enhanced degree of proof by an employee with a preexisting disability or condition who is prosecuting a claim under the Nebraska Workers' Compensation Act. For an award based on disability, a claimant need only establish by a preponderance of the evidence that the employment proximately caused an injury which resulted in compensable disability. *Gray v. Fuel Economy Contracting Co.*, 236 Neb. 937, 464 N.W.2d 366 (1991).

Pursuant to subsection (2) of this section, a claimant is entitled to an award for a work-related injury and disability if the claimant shows, by a preponderance of the evidence, that the claimant sustained an injury and disability proximately caused by an accident which arose out of and in the course of the claimant's employment, even though a preexisting disability or condition has combined with the present work-related injury to produce the disability; there is no enhanced degree of proof

required for claimants in cases where preexisting conditions combined with a work-related injury to produce a disability. *Heiliger v. Walters & Heiliger Electric, Inc.*, 236 Neb. 459, 461 N.W.2d 565 (1990).

Under subdivision (2) of this section, medical expert testimony is required to show that a work-related dislocated shoulder combined with a preexisting recurrent shoulder problem to cause a plaintiff's need for surgery to correct the preexisting condition. *Kingslan v. Jensen Tire Co.*, 227 Neb. 294, 417 N.W.2d 164 (1987).

While the act of suicide may be an independent intervening cause in some cases, it is certainly not so in those cases where the uncontrovertible evidence shows that, without the injury, there would have been no suicide; that the suicide was merely an act intervening between the injury and the death and part of an unbroken chain of events from the injury to the death. *Friedeman v. State*, 215 Neb. 413, 339 N.W.2d 67 (1983).

Peritoneal mesothelioma is a compensable occupational disease within the meaning of this section. *Osteen v. A.C. and S., Inc.*, 209 Neb. 282, 307 N.W.2d 514 (1981).

The requirement that objective symptoms be produced "at the time" of the accident is satisfied if they appear in natural course without any intervening cause, and need not be observed by anyone but claimant. *Salinas v. Cyprus Industrial Minerals Co.*, 197 Neb. 198, 247 N.W.2d 451 (1976).

The burden of proving intoxication as a defense is on the employer. *Johnson v. Hahn Bros. Constr., Inc.*, 188 Neb. 252, 196 N.W.2d 109 (1972).

A workmen's compensation claimant with atherosclerosis, which is a personal risk, has the burden of showing, unaided by presumptions, that an employment risk greater than that attributable to ordinary nonemployment life was a cause of his injury. *Conn v. ITL, Inc.*, 187 Neb. 112, 187 N.W.2d 641 (1971).

Without evidence as to the cause of death, there is no presumption that the death arose out of and in the course of employment. *Hannon v. J. L. Brandeis & Sons, Inc.*, 186 Neb. 122, 181 N.W.2d 253 (1970).

Evidence sufficient to show that loss of eye was traceable to accidental injury. *Yost v. City of Lincoln*, 184 Neb. 263, 166 N.W.2d 595 (1969).

Effect of substituting injury for event in definition of accident discussed. *Harmon v. City of Omaha*, 183 Neb. 352, 160 N.W.2d 189 (1968).

Legislative change of definition of accident in this section from event to injury discussed. *Williams v. Dobberstein*, 182 Neb. 862, 157 N.W.2d 776 (1968).

An inference based solely on speculation or possibility will not sustain an award of compensation. *Hardin v. Moorman Manuf. Co.*, 179 Neb. 869, 140 N.W.2d 820 (1966).

Objective symptoms of an injury are those which may be observed by others. *Schoenrock v. School Dist. of Nebraska City*, 179 Neb. 621, 139 N.W.2d 547 (1966).

An occupational disease is a disease which is due to causes and conditions characteristic and peculiar to the employment. *Ritter v. Hawkeye-Security Ins. Co.*, 178 Neb. 792, 135 N.W.2d 470 (1965).

The aggravation of an employee's existing physical condition by an occupational hazard which is characteristic and peculiar to the employment is compensable. *Riggs v. Gooch Milling & Elevator Co.*, 173 Neb. 70, 112 N.W.2d 531 (1961).

Workmen who leave their line of duty for purposes of their own are not protected. *Seger v. Keating Implement Co.*, 157 Neb. 560, 60 N.W.2d 598 (1953); *Simon v. Standard Oil Co.*, 150 Neb. 799, 36 N.W.2d 102 (1949).

When accident to eye results after week or more in diseased condition, injury occurred when diseased condition culminated. *Johansen v. Union Stock Yards Co.*, 99 Neb. 328, 156 N.W. 511 (1916).

PART IV

NEBRASKA WORKERS' COMPENSATION COURT

48-152 Nebraska Workers' Compensation Court; creation; jurisdiction; judges; selected or retained in office.

Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) an impartial and efficient administration of the Nebraska Workers' Compensation Act is essential to the prosperity and well-being of the state, and (3) suitable laws should be enacted for the establishing and for the preservation of such an administration of the Nebraska Workers' Compensation Act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Nebraska Constitution, a court, consisting of seven judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and to be known as the Nebraska Workers' Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workers' Compensation Act, and any amendments thereof, except such as are committed to the courts of appellate jurisdiction or as otherwise provided by law.

Source: Laws 1935, c. 57, § 1, p. 188; C.S.Supp.,1941, § 48-162; R.S. 1943, § 48-152; Laws 1949, c. 161, § 3, p. 412; Laws 1965, c. 280, § 1, p. 806; Laws 1967, c. 292, § 1, p. 797; Laws 1975, LB 187, § 9; Laws 1983, LB 18, § 2; Laws 1986, LB 811, § 79; Laws 1988, LB 868, § 1; Laws 2005, LB 13, § 13.

Wrongful discharge in relation to filing a workers' compensation claim does not fall under the compensation court's exclusive jurisdiction over accidents arising out of and in the course of employment. *Bower v. Eaton Corp.*, 301 Neb. 311, 918 N.W.2d 249 (2018).

Under this section, the Workers' Compensation Court can resolve only disputes between employers and employees that arise from the provisions of the Nebraska Workers' Compensation Act; hence, because the act does not confer jurisdiction on the Workers' Compensation Court to hear personal injury suits against nonemployers, the Workers' Compensation Court does not have jurisdiction to resolve subrogation disputes between employers and employees stemming from funds recovered in a personal injury suit against a nonemployer. *Miller v. M.F.S. York/Stormor*, 257 Neb. 100, 595 N.W.2d 878 (1999).

The Nebraska Workers' Compensation Court may not acquire subject matter jurisdiction by estoppel. *Anthony v. Pre-Fab Transit Co.*, 239 Neb. 404, 476 N.W.2d 559 (1991).

A workers' compensation award cannot be based on mere possibility or speculation, and if an inference favorable to the plaintiff can only be reached on the basis thereof, he or she cannot recover. *Gray v. Fuel Economy Contracting Co.*, 236 Neb. 937, 464 N.W.2d 366 (1991).

The right of either party to refuse to accept the findings, order, award, or judgment of a compensation commissioner and to secure a rehearing or retrial before the compensation court is paramount to and exclusive of the right of appeal from such original decision to the district court. *City of Lincoln v. Nebraska Workmen's Compensation Court*, 133 Neb. 225, 274 N.W. 576 (1937).

Compensation court act is a complete and independent act in itself and, as such, modifies or amends existing statutes without violating constitutional provision relating to amendments. *Scott v. Dohrse*, 130 Neb. 847, 266 N.W. 709 (1936).

48-152.01 Nebraska Workers' Compensation Court; judges; judicial nominating commission; selection.

The members of the judicial nominating commission for the Nebraska Workers' Compensation Court shall be selected on a statewide basis as provided in section 24-803.

Source: Laws 1967, c. 292, § 4, p. 798; Laws 1973, LB 110, § 11; Laws 1986, LB 811, § 80.

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 expira-

tion 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.

48-153.01 Nebraska Workers' Compensation Court judge; eligibility.

No person shall be eligible for the office of judge of the Nebraska Workers' Compensation Court unless he or she:

- (1) Is at least thirty years of age;
- (2) Is a citizen of the United States;
- (3) Has been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge;
- (4) Is currently admitted to practice before the Nebraska Supreme Court; and
- (5) Is a resident of the State of Nebraska, and remains a resident of such state during the period of service.

This section shall not apply to a person serving as a judge of the Nebraska Workmen's Compensation Court on August 24, 1979, who continues to serve as a judge of the Nebraska Workmen's Compensation Court after August 24, 1979, and prior to July 17, 1986, and who continues to serve as a judge of the Nebraska Workers' Compensation Court on and after July 17, 1986.

Source: Laws 1979, LB 237, § 6; Laws 1986, LB 811, § 82.

48-154 Judges; removal; grounds.

Any judge of the Nebraska Workers' Compensation Court may be removed in the same manner and for the same causes as a judge of the district court may be removed.

Source: Laws 1935, c. 57, § 3, p. 189; C.S.Supp.,1941, § 48-164; R.S. 1943, § 48-154; Laws 1967, c. 292, § 3, p. 798; Laws 1986, LB 811, § 83.

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.

48-155.01 Judges; appointment of acting judge; compensation.

(1) The Governor may, by single order, appoint a qualified person meeting the eligibility requirements of section 48-153.01 to serve as acting judge of the Nebraska Workers' Compensation Court. Such appointment shall be for a period of two years. In determining whether a person is qualified to serve as acting judge of the compensation court, the Governor shall consider the person's knowledge of the law, experience in the legal system, intellect, capacity for fairness, probity, temperament, and industry. The acting judge shall be subject to call by the presiding judge of the compensation court, who may assign the acting judge to temporary duty in order to (a) sit in the compensation court to relieve a congested docket of the court or to prevent the docket from becoming congested or (b) sit for a judge of the court who may be incapacitated or absent for any reason. An acting judge appointed and assigned pursuant to this section shall possess the same powers and be subject to the duties, restrictions, and liabilities as are prescribed by law respecting judges of the compensation court, except that an acting judge is not prohibited from practicing law as provided in section 7-111.

(2) The acting judge shall receive for each day of temporary duty an amount equal to one-twentieth of the monthly salary he or she would receive if he or she were a regularly appointed judge of the compensation court and shall be

reimbursed for his or her expenses while on temporary duty at the same rate as provided in sections 81-1174 to 81-1177. Within fifteen days following completion of a temporary duty assignment, the acting judge shall submit to the presiding judge of the compensation court a request for payment or reimbursement for services rendered and expenses incurred during such temporary duty assignment. Upon receipt of such request, the presiding judge shall endorse on the request that the services were performed and expenses incurred pursuant to an assignment of the presiding judge of the compensation court and file such request with the proper authority for payment.

(3) The acting judge shall not pay into the Nebraska Retirement Fund for Judges nor be eligible for retirement benefits under the Judges Retirement Act.

Source: Laws 1959, c. 226, § 1, p. 792; Laws 1981, LB 204, § 79; Laws 1986, LB 811, § 85; Laws 1994, LB 833, § 27; Laws 2004, LB 1097, § 22; Laws 2005, LB 238, § 13.

Cross References

Judges Retirement Act, see section 24-701.01.

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.

The plain and ordinary meaning of the quorum requirement of this section is that review of a disputed claim must be conducted by no less than three judges of the Workers' Compensation Court. *Hagelstein v. Swift-Eckrich Div. of ConAgra*, 257 Neb. 312, 597 N.W.2d 394 (1999).

Absent statutory disqualification, bias, or other cause shown, it is not prejudicial for the one judge of the Workmen's Comp-

sation Court to serve as one of the judges of that court on rehearing. *Schademann v. Casey*, 194 Neb. 149, 231 N.W.2d 116 (1975).

A majority of the court as a quorum is empowered to transact business. *City of Lincoln v. Nebraska Workmen's Compensation Court*, 133 Neb. 225, 274 N.W. 576 (1937).

48-157 Clerk; administrator; appointment; duties.

(1) The presiding judge of the Nebraska Workers' Compensation Court shall appoint a clerk of the compensation court and such employees as the compensation court deems necessary to support the judicial proceedings of the compensation court, subject to approval of the compensation court. The clerk and employees supporting the judicial proceedings of the compensation court shall serve at the pleasure of the compensation court and shall perform such duties pertaining to the affairs of the court as the compensation court may prescribe or as otherwise provided by law.

(2) The presiding judge shall, subject to approval of the compensation court, appoint an administrator of the compensation court, who shall be the chief administrative officer of the compensation court. The administrator shall serve at the pleasure of the compensation court and shall perform such duties

pertaining to affairs of the compensation court as the presiding judge may prescribe or as otherwise provided by law. The administrator shall appoint such other employees as the administrator deems necessary to carry out the duties of the administrator, subject to approval of the presiding judge. Employees appointed by the administrator shall serve at the pleasure of the administrator and shall perform such duties as the administrator may prescribe.

(3) The clerk shall, under the direction of the presiding judge, keep a full and true record of the judicial proceedings of the compensation court, record all pleadings and other documents filed with the compensation court, and issue all necessary notices and writs. No action shall be taken on any pleading or other document filed with the compensation court until the same has been recorded by the clerk. At the time a petition or motion is filed the clerk shall, on a rotating basis, assign one of the judges of the compensation court to hear the cause.

(4) The clerk may, under the direction of the presiding judge, make or cause to be made preservation duplicates of any record relating to the judicial proceedings of the compensation court. The original record may be destroyed, but only with the approval of the State Records Administrator pursuant to the Records Management Act. The reproduction of the preservation duplicates shall be admissible as evidence in any court of record in the State of Nebraska and, when duly certified, shall be evidence of equal credibility with the original record.

(5) Notices of hearings, notices of continuances, and summonses may be destroyed without preparing preservation duplicates after a record of their issuance has been made in the docket book. A reproduction of the page of the docket book or of the preservation duplicate of the page of the docket book showing such record and, in the case of summonses, showing issuance or return of the summons, when duly certified, shall be evidence of equal credibility with the original notice or summons. Correspondence, exhibits, and other documents relating to the judicial proceedings of the compensation court which the clerk deems to be irrelevant, unimportant, or superfluous may be destroyed without preparing preservation duplicates.

Source: Laws 1935, c. 57, § 7, p. 190; C.S.Supp.,1941, § 48-168; R.S. 1943, § 48-157; Laws 1945, c. 113, § 4, p. 365; Laws 1945, c. 238, § 20, p. 713; Laws 1951, c. 311, § 2, p. 1066; Laws 1969, c. 388, § 4, p. 1363; Laws 1975, LB 194, § 1; Laws 1983, LB 263, § 1; Laws 1986, LB 811, § 87; Laws 1997, LB 128, § 3; Laws 2005, LB 13, § 15.

Cross References

Records Management Act, see section 84-1220.

The office of clerk of the compensation court is provided for by this section, and the clerk is made the keeper of the records of the proceedings of the court. *Dolner v. Peter Kiewit & Sons Co.*, 143 Neb. 384, 9 N.W.2d 483 (1943).

48-158 Judges; administrator; clerk; bond or insurance; oath.

Each of the judges of the Nebraska Workers' Compensation Court, the administrator of the compensation court, and the clerk of the compensation court shall, before entering upon or discharging any of the duties of his or her office, be bonded or insured as required by section 11-201 and such judges,

administrator, and clerk shall, before entering upon the duties of their offices, take and subscribe the statutory oath of office.

Source: Laws 1935, c. 57, § 8, p. 191; C.S.Supp.,1941, § 48-169; R.S. 1943, § 48-158; Laws 1978, LB 653, § 9; Laws 1986, LB 811, § 88; Laws 2004, LB 884, § 20; Laws 2005, LB 13, § 16.

48-159 Nebraska Workers' Compensation Court; judges; employees; salary; expenses.

(1) As soon as the same may be legally paid under the Constitution of Nebraska, each judge of the Nebraska Workers' Compensation Court shall receive an annual salary of ninety-two and one-half percent of the salary set for the Chief Justice and judges of the Supreme Court, payable in the same manner as the salaries of other state officers are paid. The administrator, the clerk, and all other employees of the compensation court shall receive such salaries as the compensation court shall determine, but not to exceed the amount of the appropriation made by the Legislature for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees are paid. The administrator, clerk, and other employees of the compensation court shall not receive any other salary or pay for their services from any other source.

(2) In addition to the salaries as provided by subsection (1) of this section, the judges of the Nebraska Workers' Compensation Court and the administrator, clerk, and other employees of the compensation court shall be entitled, while traveling on the business of the compensation court, to be reimbursed by the state for their necessary traveling expenses, consisting of transportation, subsistence, lodging, and such other items of expense as are necessary, to be paid as provided in sections 81-1174 to 81-1177.

Source: Laws 1935, c. 57, § 9, p. 191; C.S.Supp.,1941, § 48-170; R.S. 1943, § 48-159; Laws 1945, c. 113, § 12, p. 368; Laws 1947, c. 174, § 3, p. 562; Laws 1951, c. 154, § 1, p. 624; Laws 1953, c. 164, § 1, p. 515; Laws 1957, c. 206, § 1, p. 725; Laws 1959, c. 227, § 1, p. 794; Laws 1963, c. 289, § 1, p. 866; Laws 1965, c. 281, § 1, p. 808; Laws 1967, c. 293, § 1, p. 799; Laws 1969, c. 397, § 1, p. 1387; Laws 1972, LB 1293, § 4; Laws 1974, LB 923, § 4; Laws 1976, LB 76, § 5; Laws 1978, LB 672, § 5; Laws 1979, LB 398, § 5; Laws 1981, LB 111, § 5; Laws 1981, LB 204, § 80; Laws 1986, LB 811, § 89; Laws 1997, LB 853, § 2; Laws 2005, LB 13, § 17.

48-159.01 Repealed. Laws 1953, c. 164, § 3.

48-159.02 Repealed. Laws 1957, c. 206, § 3.

48-159.03 Repealed. Laws 1959, c. 266, § 1.

48-159.04 Repealed. Laws 1963, c. 341, § 1.

48-159.05 Repealed. Laws 1965, c. 281, § 3.

48-159.06 Repealed. Laws 1969, c. 411, § 1.

48-159.07 Repealed. Laws 1986, LB 811, § 149.**48-159.08 Judges; salary increase; when effective.**

Section 48-159 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for judges of the Nebraska Workers' Compensation Court and to give effect to such salary as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1969, c. 397, § 2, p. 1388; Laws 1986, LB 811, § 90.

48-160 Compensation court; seal.

The Nebraska Workers' Compensation Court shall have a seal for the authentication of its orders, awards, judgments, summons, subpoenas, and other writs. The seal may be either an engraved or ink stamp seal, and shall bear the words Nebraska Workers' Compensation Court—Official Seal, and shall be judicially noticed.

Source: Laws 1935, c. 57, § 10, p. 191; C.S.Supp.,1941, § 48-171; R.S. 1943, § 48-160; Laws 1971, LB 653, § 5; Laws 1986, LB 811, § 91.

48-161 Disputed claims; submission to court required; court; jurisdiction of ancillary issues.

All disputed claims for workers' compensation shall be submitted to the Nebraska Workers' Compensation Court for a finding, award, order, or judgment. Such compensation court shall have jurisdiction to decide any issue ancillary to the resolution of an employee's right to workers' compensation benefits, except that jurisdiction with respect to income withholding pursuant to the Income Withholding for Child Support Act shall be as provided in such act, jurisdiction with respect to garnishment for support shall be as provided in sections 25-1009 to 25-1056 and 43-512.09, and jurisdiction with respect to administrative attachment and bank matching shall be as provided in sections 43-3328 to 43-3339.

Source: Laws 1935, c. 57, § 11, p. 191; C.S.Supp.,1941, § 48-172; R.S. 1943, § 48-161; Laws 1986, LB 811, § 92; Laws 1990, LB 313, § 3; Laws 1993, LB 523, § 25; Laws 1997, LB 752, § 125.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

1. Jurisdiction
2. Miscellaneous

1. Jurisdiction

A contractual dispute over private agreements for disability coverage that is not workers' compensation coverage is not ancillary to the Workers' Compensation Court's primary jurisdiction. *Bower v. Eaton Corp.*, 301 Neb. 311, 918 N.W.2d 249 (2018).

Ancillary jurisdiction does not include the power to enforce an award. *Burnham v. Pacesetter Corp.*, 280 Neb. 707, 789 N.W.2d 913 (2010).

Ancillary jurisdiction is the power of a court to adjudicate and determine matters incidental to the exercise of its primary jurisdiction of an action. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

The final resolution of an employee's right to workers' compensation benefits does not preclude an issue from being ancillary to the resolution of the employee's right to benefits within the meaning of this section. *Midwest PMS v. Olsen*, 279 Neb. 492, 778 N.W.2d 727 (2010).

While, under this section, the compensation court may determine the existence of insurance, such jurisdiction is not exclusive and such a determination is not mandatory. *Risor v. Nebraska Boiler*, 274 Neb. 906, 744 N.W.2d 693 (2008).

This section provides the Workers' Compensation Court with jurisdiction to determine insurance disputes in workers' compensation claims, including the existence of coverage and the extent of an insurer's liability. According to the terms of this section, that jurisdiction is not exclusive, however, and the district court may also exercise its inherent jurisdiction for these purposes. *Schweitzer v. American Nat. Red Cross*, 256 Neb. 350, 591 N.W.2d 524 (1999).

The Workers' Compensation Court has no jurisdiction to determine workers' compensation insurance coverage disputes. *Thomas v. Omega Re-Bar, Inc.*, 234 Neb. 449, 451 N.W.2d 396 (1990).

The Nebraska Workmen's Compensation Court has exclusive jurisdiction in actions arising under the Workmen's Compensation Act. *Peak v. Bosse*, 202 Neb. 1, 272 N.W.2d 750 (1978).

Although the Workers' Compensation Court has jurisdiction to decide ancillary matters to a workers' compensation claim, an award of attorney fees for the creation of a common fund is not within such ancillary jurisdiction when the entity from which such fees are sought is not a party to the case. *Heesch v. Swintastic Swim School*, 20 Neb. App. 260, 823 N.W.2d 211 (2012).

Even though this section vests the Nebraska Workers' Compensation Court with jurisdiction to decide issues ancillary to an employee's right to workers' compensation benefits, such jurisdiction is not exclusive and a district court has jurisdiction to hear a declaratory judgment action regarding a workers' compensation insurance policy coverage dispute. *Kruid v. Farm Bureau Mut. Ins. Co.*, 17 Neb. App. 687, 770 N.W.2d 652 (2009).

Although, as a statutorily created court, the Workers' Compensation Court is a tribunal of limited and special jurisdiction and has only such authority as has been conferred on it by statute, under this section, the compensation court has jurisdiction to decide any issue ancillary to the resolution of an employee's right to workers' compensation benefits. *Nerison v. Nation-*

al Fire Ins. Co. of Hartford, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

2. Miscellaneous

Employer may initiate workmen's compensation proceeding. *Fidelity & Casualty Co. v. Kennard*, 162 Neb. 220, 75 N.W.2d 553 (1956).

An award of compensation cannot be sustained if based upon possibilities, probabilities, conjectural or speculative evidence. *Hamilton v. Huebner*, 146 Neb. 320, 19 N.W.2d 552 (1945).

In disputed claim for compensation, compensation court could make award for injuries in cases not covered by the schedule of compensation. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

An agreement to pay compensation must be approved by compensation commissioner or compensation court or it is void. *Duncan v. A. Hospe Co.*, 133 Neb. 810, 277 N.W. 339 (1938).

Right of either party to refuse award or judgment of compensation commissioner and demand retrial before compensation court is paramount to and exclusive of right of appeal to district court from such decision. *City of Lincoln v. Nebraska Workmen's Compensation Court*, 133 Neb. 225, 274 N.W. 576 (1937).

48-162 Compensation court; duties; powers.

(1) The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, supervisor, or officer of any partnership, limited liability company, or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order.

(2) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, documents, payrolls, medical reports, X-rays, photographs, or plates or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before the compensation court or any judge thereof.

(3) The compensation court or any judge thereof may expedite the hearing of a disputed case when there is an emergency.

Source: Laws 1917, c. 85, § 27, p. 218; Laws 1921, c. 122, § 2, p. 530; C.S.1922, § 3076; C.S.1929, § 48-153; Laws 1935, c. 57, § 34, p. 204; C.S.Supp.,1941, § 48-153; R.S.1943, § 48-162; Laws 1983, LB 18, § 5; Laws 1983, LB 263, § 2; Laws 1986, LB 811, § 93; Laws 1987, LB 187, § 2; Laws 1993, LB 121, § 284; Laws 1993, LB 757, § 16; Laws 2005, LB 13, § 18.

48-162.01 Employees; rehabilitation services; directory of service providers, counselors, and specialists; vocational rehabilitation plan; priorities; Attorney General; duties; compensation court; powers; duties.

(1) One of the primary purposes of the Nebraska Workers' Compensation Act is restoration of the injured employee to gainful employment. To this end the

Nebraska Workers' Compensation Court may employ one or more specialists in vocational rehabilitation. Salaries, other benefits, and administrative expenses incurred by the compensation court for purposes of vocational rehabilitation shall be paid from the Compensation Court Cash Fund.

(2) Vocational rehabilitation specialists employed by the court shall continuously study the problems of vocational rehabilitation and shall maintain a directory of individual service providers, counselors, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court may approve as qualified such individual service providers, counselors, and specialists as are capable of rendering competent vocational rehabilitation services to injured employees. No individual service provider, counselor, or specialist shall be considered qualified to provide vocational rehabilitation services to injured employees unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she is entitled to such vocational rehabilitation services, including job placement and training, as may be reasonably necessary to restore him or her to suitable employment. Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund. When vocational rehabilitation training requires residence at or near a facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and a vocational rehabilitation specialist of the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by a vocational rehabilitation specialist or judge of the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation plan. Any such plan shall be evaluated by a vocational rehabilitation specialist of the compensation court and approved by such specialist or a judge of the compensation court prior to implementation. In evaluating a plan the specialist shall make an independent determination as to whether the proposed plan is likely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. It is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her workers' compensation insurer. The compensation court

may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a vocational rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the vocational rehabilitation counselor and a vocational rehabilitation specialist or judge of the compensation court to be unlikely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer;
- (c) A new job with the same employer;
- (d) A job with a new employer; or
- (e) A period of formal training which is designed to lead to employment in another career field.

(4) The compensation court may cooperate on a reciprocal basis with federal and state agencies for vocational rehabilitation services or with any public or private agency.

(5) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 regarding any issue related to vocational rehabilitation services or costs pursuant to this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may initiate an original action before the compensation court or may intervene in a pending action and become a party to the litigation. Any such motion shall be heard by a judge of the compensation court other than the presiding judge.

(6) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt physical and medical rehabilitation services. If physical or medical rehabilitation services are not voluntarily offered and accepted, the compensation court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a facility, institution, physician, or other individual service provider capable of rendering competent physical or medical rehabilitation services for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her workers' compensation insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or

medical rehabilitation treatment or service be provided at the expense of the employer or his or her workers' compensation insurer.

When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her workers' compensation insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability.

(7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with a physical, medical, or vocational rehabilitation program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) or (6) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Source: Laws 1969, c. 388, § 1, p. 1357; Laws 1974, LB 808, § 2; Laws 1983, LB 266, § 1; Laws 1986, LB 811, § 94; Laws 1993, LB 757, § 17; Laws 1997, LB 128, § 4; Laws 1999, LB 216, § 14; Laws 2000, LB 1221, § 11; Laws 2004, LB 1091, § 3; Laws 2005, LB 13, § 19.

- 1. Award of vocational rehabilitation benefits
- 2. Suitable employment
- 3. Rebuttable presumption
- 4. Labor market
- 5. Powers of court
- 6. Modification by court
- 7. Miscellaneous

1. Award of vocational rehabilitation benefits

A vocational rehabilitation plan seeking to place a part-time hourly employee who suffered a permanent impairment in employment where the employee would earn wages similar to those based upon a calculation of average weekly wage under section 48-121(4) would best achieve the goal of restoring the employee to suitable employment. *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012).

In all cases not otherwise provided for by statute or by the Nebraska Evidence Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. This rule applies to the rebuttable presumption that an opinion regarding loss of earning capacity expressed by a vocational rehabilitation counselor appointed or selected pursuant to subsection (3) of this section is correct. In determining whether the presumption contained in subsection (3) of this section has been rebutted, the single judge is required to make factual findings. *Frauentorfer v. Lindsay Mfg. Co.*, 263 Neb. 237, 639 N.W.2d 125 (2002).

To hold that a worker can receive vocational rehabilitation benefits absent a finding that the worker is permanently impaired does not amount to a sensible reading of this section. *Green v. Drivers Mgmt., Inc.*, 263 Neb. 197, 639 N.W.2d 94 (2002).

Subsection (3) of this section does not provide for the modification of previous awards; it merely defines a benefit available

to a class of injured workers. *Dougherty v. Swift-Eckrich*, 251 Neb. 333, 557 N.W.2d 31 (1996).

A finding that an employee's injury is compensable under the Workers' Compensation Act is required for approval of any vocational rehabilitation plan paid for by the trust fund, though such a finding is not necessarily required for settlements including a program of vocational rehabilitation paid for by the employer or its insurer. *Miner v. Robertson Home Furnishing*, 239 Neb. 525, 476 N.W.2d 854 (1991).

Vocational rehabilitation may be denied where the injured worker is able to perform work for which the worker has previous training and experience. *Cline v. County Seat Lounge*, 239 Neb. 42, 473 N.W.2d 404 (1991).

An employee is entitled to vocational rehabilitation benefits when, as the result of a compensable injury, he or she is unable to perform work for which he or she has previous training or experience or when there is a reasonable probability that such rehabilitation will reduce the amount of earning power loss the employee would otherwise suffer. *Bindrum v. Foote & Davies*, 235 Neb. 903, 457 N.W.2d 828 (1990).

An employee, unless he or she is otherwise qualified to receive temporary total disability benefits, is entitled to such benefits only while undergoing rehabilitation which has been ordered by the compensation court. *Bindrum v. Foote & Davies*, 235 Neb. 903, 457 N.W.2d 828 (1990).

A plan of direct job placement, when prescribed as the only form of appropriate vocational rehabilitation for an injured employee, is vocational rehabilitation within the meaning of

section 48-121(5). *Carter v. Weyerhaeuser Co.*, 234 Neb. 558, 452 N.W.2d 32 (1990).

An award of vocational rehabilitation benefits is permitted when, as the result of a compensable injury, a worker is unable to perform work for which he or she has previous training or experience, or when such rehabilitation will reduce the amount of earning power loss the worker would otherwise suffer. *Thom v. Lutheran Medical Center*, 226 Neb. 737, 414 N.W.2d 810 (1987).

An award of vocational rehabilitation benefits must be supported by evidence which shows the workman is unable to perform work for which he has previous training and experience. *Bender v. Norfolk Iron & Metal Co.*, 224 Neb. 706, 400 N.W.2d 859 (1987).

A finding that vocational rehabilitation is for the employee's best interest is a statutory prerequisite to ordering such. *Pollock v. Monfort of Colorado*, 221 Neb. 859, 381 N.W.2d 154 (1986).

A finding by the Workmen's Compensation Court of total disability upon the part of a claimant meets the requirements of this section so as to justify the award of vocational rehabilitation services. *Heironymus v. Jacobsen Transfer*, 215 Neb. 209, 337 N.W.2d 769 (1983).

Subsections (3) and (6) of this section when read together, mean that the statute authorizes vocational rehabilitation training when the employee has suffered a reduction in earning power that may be remedied by such training as well as when the specific requirements of subsection (3) are met. *Sidel v. Travelers Ins. Co.*, 205 Neb. 541, 288 N.W.2d 482 (1980).

When an employee is unable to perform the work for which he has previous training or experience as a result of an injury covered by the Workmen's Compensation Act, he is entitled to vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. *Behrens v. Ken Corp.*, 191 Neb. 625, 216 N.W.2d 733 (1974).

Past performance in a rehabilitation program can be used as a basis to determine whether further vocational rehabilitation should be awarded. An obvious requirement of a plan of vocational rehabilitation is that the injured party cooperate with the program. Mere physical presence in a program does not necessarily establish cooperation. Pursuant to subsection (6) of this section, the Workers' Compensation Court may suspend, reduce, or limit compensation if a worker refuses to be rehabilitated; however, the court is not required to take that action. *Warburton v. M & D Construction Co.*, 1 Neb. App. 498, 498 N.W.2d 611 (1993).

2. Suitable employment

The goal of suitable employment, for purposes of vocational rehabilitation analysis, includes a similar earning capacity for the workers' compensation claimant. *Bower v. Eaton Corp.*, 301 Neb. 311, 918 N.W.2d 249 (2018).

Although an injured employee ultimately wished to become self-employed growing and selling produce, a vocational rehabilitation plan designed to train the employee for full-time work as a supervisor or manager and geared toward returning the employee to employment paying wages similar to those earned prior to the injury comported with the goal to return an injured employee to suitable employment. *Anderson v. EMCOR Group*, 298 Neb. 174, 903 N.W.2d 29 (2017).

Suitable employment is employment which is compatible with the employee's pre-injury occupation, age, education, and aptitude. *Anderson v. EMCOR Group*, 298 Neb. 174, 903 N.W.2d 29 (2017).

An illegal immigrant's avowed intent to remain an unauthorized worker in the United States is contrary to the statutory purpose of this section of returning an employee to suitable employment. *Ortiz v. Cement Products*, 270 Neb. 787, 708 N.W.2d 610 (2005).

Accepting a job paying minimum wage does not automatically "restore" a claimant to "suitable" or "gainful" employment pursuant to this section, where the claimant's previous employ-

ment was at a significantly higher wage. *Yager v. Bellco Midwest*, 236 Neb. 888, 464 N.W.2d 335 (1991).

3. Rebuttable presumption

The opinions of a court-appointed vocational rehabilitation expert regarding a workers' compensation claimant's vocational rehabilitation and loss of earning power have a rebuttable presumption of validity. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

Pursuant to subsection (3) of this section, a rebuttable presumption in favor of a court-appointed vocational rehabilitation expert's opinion in workers' compensation proceedings can be rebutted by a showing that the experts' assessment was predicated on principles that are contrary to law. *Giboo v. Certified Transmission Rebuilders*, 275 Neb. 369, 746 N.W.2d 362 (2008).

Pursuant to Neb. Evid. R. 301, in all cases not otherwise provided for by statute or by the Nebraska Evidence Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. This rule applies to the rebuttable presumption that an opinion regarding loss of earning capacity expressed by a vocational rehabilitation counselor appointed or selected pursuant to this section is correct. *Dawes v. Wittrock Sandblasting & Painting*, 266 Neb. 526, 667 N.W.2d 167 (2003).

Subsection (3) of this section creates two rebuttable presumptions, the "vocational rehabilitation plan presumption of correctness" and the "loss of earning capacity opinion presumption of correctness". Pursuant to the plain language of subsection (3) of this section, in order for a vocational rehabilitation plan presumption of correctness to attach, two conjunctive requirements must be met; first, the vocational rehabilitation counselor must develop a vocational rehabilitation "plan", and second, that plan must be submitted and approved by a vocational rehabilitation specialist of the Workers' Compensation Court. Where a vocational rehabilitation counselor has declined to evaluate an injured worker's loss of earning capacity, the vocational rehabilitation counselor has not provided a loss of earning capacity opinion from which to afford a rebuttable presumption of correctness. *Rodriguez v. Monfort, Inc.*, 262 Neb. 800, 635 N.W.2d 439 (2001).

The only opinion regarding vocational rehabilitation or loss of earning power entitled to a rebuttable presumption pursuant to subsection (3) of this section is that of a vocational rehabilitation counselor chosen or selected by the procedures set forth in subsection (3) of this section. The phrase "loss-of-earning-power evaluation" in subsection (3) of this section refers to a process as opposed to a document. This section applies to the rebuttable presumption that an opinion regarding loss of earning capacity expressed by a vocational rehabilitation counselor appointed or selected pursuant to subsection (3) of this section is correct. *Variano v. Dial Corp.*, 256 Neb. 318, 589 N.W.2d 845 (1999).

In determining whether the presumption contained in subsection (3) of this section, that any opinion expressed as the result of a loss-of-earning-power evaluation by a court-appointed vocational rehabilitation counselor is correct, has been rebutted, a single judge of the Workers' Compensation Court is required to make factual findings. The rebuttable presumption in subsection (3) of this section, that any opinion expressed as the result of a loss-of-earning-power evaluation by a court-appointed vocational rehabilitation counselor is correct, can be rebutted not only by the testimony of another expert, but also by the testimony of the claimant. *Romero v. IBP, Inc.*, 9 Neb. App. 927, 623 N.W.2d 332 (2001).

4. Labor market

If an employer believes a court-appointed vocational expert's opinion in selecting the relevant geographic area for assessing a claimant's loss of earning power is incorrect, the employer has the burden to rebut the expert's opinion by showing there are employment opportunities reasonably available to the claimant in a prospective area. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

In determining whether to include surrounding communities as part of the relevant labor market for assessing the claimant's loss of earning power, both the court-appointed vocational rehabilitation experts and the trial judge should consider the following factors: (1) availability of transportation, (2) duration of the commute, (3) length of workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, (5) economic feasibility of a person in the claimant's position working in that location, and (6) whether others who live in the claimant's hub community regularly seek employment in the prospective area. *Money v. Tyrrell Flowers*, 275 Neb. 602, 748 N.W.2d 49 (2008).

5. Powers of court

Pursuant to subsection (3) of this section, if rehabilitation services are not voluntarily offered and accepted, Second Injury Fund may apply to Workers' Compensation Court to determine need for vocational rehabilitation. *Sherard v. Bethphage Mission, Inc.*, 236 Neb. 900, 464 N.W.2d 343 (1991).

To determine whether findings of fact made by the compensation court support an order granting or denying vocational rehabilitation benefits, the Supreme Court must consider the findings of fact in light of this section. *Yager v. Bellco Midwest*, 236 Neb. 888, 464 N.W.2d 335 (1991).

The inability of an injured employee to perform work for which he has previous training and experience is ordinarily a question of fact to be determined by the compensation court. *Smith v. Hastings Irr. Pipe Co.*, 222 Neb. 663, 386 N.W.2d 9 (1986).

Whether an injured workman has a right to vocational rehabilitation depends upon his inability to perform work for which he has previous training and experience, and is ordinarily a question of fact to be determined by the compensation court. *Evans v. American Community Stores*, 222 Neb. 538, 385 N.W.2d 91 (1986).

The Workmen's Compensation Court may, as a condition of awarding compensation to an injured employee, require the employee, if appropriate, to submit himself for evaluation to determine if the employee may be retrained and thereby gainfully employed in the future. *Savage v. Hensel Phelps Constr. Co.*, 208 Neb. 676, 305 N.W.2d 375 (1981).

In making award for rehabilitation services, the Workmen's Compensation Court may prescribe procedure for employee to follow if he wants to obtain such services. *Camp v. Blount Bros. Corp.*, 195 Neb. 459, 238 N.W.2d 634 (1976).

Pursuant to subsection (3) of this section, when a vocational rehabilitation counselor submits multiple reports that are determined to be written not because a process of recovery was incomplete from the time a prior report was written, but, rather, because a counselor gives differing opinions each based on a different factual scenario, it is up to the trial court to make factual findings to determine which report should be given the rebuttable presumption of correctness. *Ladd v. Complete Concrete*, 13 Neb. App. 200, 690 N.W.2d 416 (2004).

Pursuant to subsection (3) of this section, when a vocational rehabilitation counselor submits multiple reports that are determined to be written not because a process of recovery was incomplete from the time a prior report was written, but, rather, because a counselor gives differing opinions each based on a different factual scenario, it is up to the trial court to make factual findings to determine which report should be given the rebuttable presumption of correctness. *Noordam v. Vickers, Inc.*, 11 Neb. App. 739, 659 N.W.2d 856 (2003).

The Workers' Compensation Court's determination that the employee was entitled to language rehabilitation services as recommended by the rehabilitation specialist was not clearly erroneous. *Paz v. Monfort, Inc.*, 1 Neb. App. 267, 492 N.W.2d 894 (1992).

6. Modification by court

Subsection (7) of this section cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated with medical treatment or vocational rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to permit the compensation court to modify rehabilitation plans in response to changed circumstances following the entry of the initial plan. It does not apply to situations in which a worker has refused to cooperate with treatment or rehabilitation. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Subsection (7) of this section is intended to prevent an employee's refusal to improve his or her medical condition or earning capacity from causing an employer to pay more workers' compensation benefits than it should. It only authorizes the complete termination of a claimant's right to benefits under the Nebraska Workers' Compensation Act if evidence is presented to support a finding that had the employee availed himself or herself of the benefits offered, the employee would no longer be disabled. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

Both parts of the two-part test in subsection (7) of this section present factual questions to be determined by the trial judge based upon the evidence. *Lowe v. Drivers Mgmt. Inc.*, 274 Neb. 732, 743 N.W.2d 82 (2007).

Subsection (7) of this section establishes a two-part test to determine whether benefits should be suspended, reduced, or limited. First, the employee must either refuse to undertake or fail to cooperate with a court-ordered physical, medical, or vocational rehabilitation program. Second, the employee's refusal must be without reasonable cause. *Lowe v. Drivers Mgmt. Inc.*, 274 Neb. 732, 743 N.W.2d 82 (2007).

Under the provisions of subsection (7) of this section, the employer bears the burden of proof to demonstrate that an injured employee has refused to undertake or failed to cooperate with a physical, medical, or vocational rehabilitation program and that such refusal or failure is without reasonable cause such that the compensation court or judge may properly rely on such evidence to suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. *Lowe v. Drivers Mgmt. Inc.*, 274 Neb. 732, 743 N.W.2d 82 (2007).

The plain language of the last sentence of subsection (7) of this section contemplates a modification of services previously granted and does not provide for a modification of a final order to grant entirely new services or benefits. *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007).

7. Miscellaneous

An employee's willingness to undergo evaluation and testing by a state agency is evidence that the employee is amenable to any rehabilitation, training, or educational program determined by the compensation court. *Willuhn v. Omaha Box Co.*, 240 Neb. 571, 483 N.W.2d 130 (1992).

48-162.02 Workers' Compensation Trust Fund; created; use; contributions; Attorney General; Department of Administrative Services; duties.

(1) The Workers' Compensation Trust Fund is created. The fund shall be administered by the administrator of the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01. Payments from the fund

shall be made in the same manner as for claims against the state. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: Every insurance company which is transacting business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in subsection (2) of this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under subsections (2) and (6) of this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The administrator of the compensation court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The administrator may order payments from the fund for vocational rehabilitation services and costs pursuant to section 48-162.01 when (a) vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, (b) the employee is engaged in an approved vocational rehabilitation plan pursuant to section 48-162.01, and (c) the employer has agreed to pay weekly compensa-

tion benefits for temporary disability while the employee is engaged in such plan.

(9) The Attorney General shall represent the fund when requested by the administrator in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service shall be had upon the Attorney General.

(10) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America 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.

(11) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the administrator of the compensation court determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the administrator shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars.

(12) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

Source: Laws 1974, LB 808, § 3; Laws 1986, LB 811, § 95; Laws 1987, LB 398, § 46; Laws 1988, LB 1034, § 2; Laws 1992, LB 1006, § 95; Laws 1993, LB 757, § 18; Laws 2000, LB 1221, § 12; Laws 2004, LB 1091, § 4; Laws 2005, LB 13, § 20; Laws 2007, LB322, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

Risk management pool, defined, see section 44-4303.

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.

Under subsection (1) of this section, the Nebraska Workers' Compensation Court has authority to rule on a motion for default judgment. Cruz-Morales v. Swift Beef Co., 275 Neb. 407, 746 N.W.2d 698 (2008).

The compensation court 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. Yost v. Davita, Inc., 23 Neb. App. 482, 873 N.W.2d 435 (2015).

48-163 Compensation court; rules and regulations; procedures for adoption; powers and duties.

(1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act, except that rules and regulations relating to the compensation court's adjudicatory function shall become effective only upon approval of the Supreme Court.

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice.

(3) The administrator of the compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to such subscribers. The administrator shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.

Source: Laws 1935, c. 57, § 6, p. 190; C.S.Supp.,1941, § 48-167; R.S. 1943, § 48-163; Laws 1975, LB 187, § 11; Laws 1986, LB 811, § 96; Laws 1992, LB 360, § 17; Laws 1993, LB 757, § 24; Laws 1999, LB 216, § 15; Laws 2005, LB 13, § 21.

The Nebraska Workers' Compensation Court Rules of Procedure may supersede or supplant the Nebraska Court Rules of Pleading in Civil Actions. Cruz-Morales v. Swift Beef Co., 275 Neb. 407, 746 N.W.2d 698 (2008).

This section provides that the Workers' Compensation Court may adopt all reasonable rules necessary for carrying out the intent and purposes of section 48-101 et seq. Behrens v. American Stores Packing Co., 228 Neb. 18, 421 N.W.2d 12 (1988).

Court may remand cause for purpose of procuring competent evidence as to extent of disability. *Steward v. Deuel County*, 137 Neb. 516, 289 N.W. 877 (1940).

District court has power to call in independent medical experts as witnesses. *Lowder v. Standard Auto Parts Co.*, 136 Neb. 747, 287 N.W. 211 (1939).

Compensation court may make reasonable rules necessary for carrying out intent and purposes of the act, and shall administer and enforce all the provisions of the act except such as are committed to the courts of appellate jurisdiction. *Wilson v. Brown-McDonald Co.*, 134 Neb. 211, 278 N.W. 254 (1938).

This section, with others, evidences intent that the compensation claimant and employer shall be assured of a trial by the compensation court. *City of Lincoln v. Nebraska Workmen's Compensation Court*, 133 Neb. 225, 274 N.W. 576 (1937).

Physician was entitled to fee for examination of employee made after hearing in compensation court but before trial in district court to determine whether surgical operation on employee as demanded by employer would be reasonably safe and beneficial. *Solomon v. A. W. Farney, Inc.*, 130 Neb. 484, 265 N.W. 724 (1936).

48-164 Compensation court; rules and regulations; hearings.

The Nebraska Workers' Compensation Court shall regulate and provide the kind and character of notices and the services thereof and, in case of an injury by accident to an employee, the nature and extent of the proofs and evidence and the method of taking and furnishing the same for the establishment of the right to compensation. It shall determine the nature and form or forms of the application of those claiming to be entitled to benefits or compensation and shall regulate the method of making investigations, physical examinations, and inspections and prescribe the time within which adjudications and awards shall be made, except that when a petition for compensation is filed, a hearing shall be held within sixty days from the date of the filing thereof and an order or award made and entered thereon within thirty days after such hearing. Such rules and regulations shall conform to the provisions of the Nebraska Workers' Compensation Act.

Source: Laws 1917, c. 85, § 29, p. 220; 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, § 48-164; Laws 1945, c. 113, § 5, p. 365; Laws 1986, LB 811, § 97.

Cross References

For service of documents upon adverse party or attorney, see section 25-534.

48-165 Blank forms; distribution; fees; telephone number.

(1) The administrator of the Nebraska Workers' Compensation Court shall prepare and make available to employees, employers, and workers' compensation insurers such blank forms as deemed proper and advisable.

(2) The administrator of the compensation court may establish a schedule of fees for services including, but not limited to, copying, reproducing documents from preservation duplicates, preparing forms and other material, responding to inquiries for information, and preparing publications. In establishing fees, the administrator may consider costs for time, material, and delivery.

(3) The administrator of the compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their employers under the act.

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, § 48-165; Laws 1949, c. 161, § 4, p. 412; Laws 1983, LB 263, § 3; Laws 1986, LB 811, § 98; Laws 2005, LB 13, § 22.

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.

48-168 Compensation court; rules of evidence; procedure; informal dispute resolution; procedure.

(1) The Nebraska Workers' Compensation Court 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 as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Nebraska Workers' Compensation Act.

(2)(a) The Nebraska Workers' Compensation Court may establish procedures whereby a dispute may be submitted by the parties, by the provider of medical, surgical, or hospital services pursuant to section 48-120, by a vocational rehabilitation counselor certified pursuant to section 48-162.01, or by the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173 if otherwise permitted. If informal dispute resolution is ordered by the compensation court on its own motion, the compensation court may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. No settlement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement is in conformity with the Nebraska Workers' Compensation Act. Any such settlement shall be voluntarily entered into by the parties.

(b)(i) Except as permitted in subdivision (b)(ii) of this subsection, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or

other communication regarding a mediation to a judge of the compensation court that may make a ruling on the dispute that is the subject of the mediation.

(ii) A mediator may disclose:

(A) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; and

(B) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(iii) A communication made in violation of subdivision (b)(i) of this subsection shall not be considered by a judge of the compensation court.

(c) Informal dispute resolution proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution proceedings, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A staff member or mediator shall not be subject to process requiring the disclosure of any matter discussed during informal dispute resolution proceedings. Any information from the files, reports, notes of the staff member or mediator, or other materials or communications, oral or written, relating to an informal dispute resolution proceeding obtained by a staff member or mediator is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. No staff member or mediator shall be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

(d) The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution proceedings that are considered necessary to effectuate the purposes of this section.

Source: Laws 1917, c. 85, § 29, p. 220; 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, § 48-168; Laws 1986, LB 811, § 101; Laws 1993, LB 757, § 25; Laws 2006, LB 489, § 34; Laws 2009, LB630, § 10.

1. Rules of evidence, applicability
2. Miscellaneous

1. Rules of evidence, applicability

The Workers' Compensation Court is not bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure. *Olivotto v. DeMarco Bros. Co.*, 273 Neb. 672, 732 N.W.2d 354 (2007).

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), does not apply in a workers' compensation case where the rules of evidence do not apply. *Veatch v. American Tool*, 267 Neb. 711, 676 N.W.2d 730 (2004).

Although the evidentiary rules of the Nebraska Workers' Compensation Court may not be more restrictive than those of trial courts, they may also be less so. The Nebraska Workers' Compensation Court is permitted to admit evidence which over proper objection could not be introduced in a state trial court. *Sheridan v. Catering Mgmt., Inc.*, 252 Neb. 825, 566 N.W.2d 110 (1997).

Subject to the limits of constitutional due process, the admission of evidence is within the discretion of the Nebraska Workers' Compensation Court, whose determination in this regard will not be reversed upon appeal absent an abuse of discretion.

Sheridan v. Catering Mgmt., Inc., 252 Neb. 825, 566 N.W.2d 110 (1997).

The Nebraska Workers' Compensation Court is not bound by the "general acceptance" test advanced in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). *Sheridan v. Catering Mgmt., Inc.*, 252 Neb. 825, 566 N.W.2d 110 (1997).

The Nebraska Workers' Compensation Court is not bound by the usual common-law or statutory rules of evidence. *Sheridan v. Catering Mgmt., Inc.*, 252 Neb. 825, 566 N.W.2d 110 (1997).

Nebraska Evidence Rules do not apply to proceedings before the Nebraska Workers' Compensation Court. *Sherard v. Bethphage Mission, Inc.*, 236 Neb. 900, 464 N.W.2d 343 (1991).

Evidentiary rules of the compensation court may not be more restrictive than those of trial courts. *Fite v. Ammcoco Tools, Inc.*, 199 Neb. 353, 258 N.W.2d 922 (1977).

Evidence which would be incompetent as hearsay in other cases is not competent under Workmen's Compensation Act. *Hamilton v. Huebner*, 146 Neb. 320, 19 N.W.2d 552 (1945).

Statements made by injured employee within few minutes after accidental injury which resulted in death, were admissible

in evidence as part of *res gestae*. *Perry v. Johnson Fruit Co.*, 123 Neb. 558, 243 N.W. 655 (1932).

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

2. Miscellaneous

The Nebraska Workers' Compensation Court Rules of Procedure may supersede or supplant the Nebraska Court Rules of Pleading in Civil Actions. *Cruz-Morales v. Swift Beef Co.*, 275 Neb. 407, 746 N.W.2d 698 (2008).

It is a general principle that intervention is not authorized after trial and neither subsection (1) of this section nor the beneficent purposes of the Nebraska Workers' Compensation

Act authorize a postaward intervention by the employer's insurer. *Risor v. Nebraska Boiler*, 274 Neb. 906, 744 N.W.2d 693 (2008).

No Nebraska statute grants equity jurisdiction to the compensation court. *Risor v. Nebraska Boiler*, 274 Neb. 906, 744 N.W.2d 693 (2008).

Sections 48-129 and 48-168, R.R.S.1943, give the Workmen's Compensation Court jurisdiction to consider the issue of joint employment. *White v. Western Commodities, Inc.*, 207 Neb. 75, 295 N.W.2d 704 (1980).

Permission to file amended petition after decision by one judge and before rehearing before entire court was within discretion of compensation court. *Faulhaber v. Roberts Dairy Co.*, 147 Neb. 631, 24 N.W.2d 571 (1946).

48-169 Compensation court; proceedings; transcripts.

A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation taken by a stenographer for the Nebraska Workers' Compensation Court or by a court reporter appointed or furnished as provided in section 48-178, being certified and sworn to by such stenographer or court reporter, to be a true and correct transcript of the testimony, or of a particular witness, or any specific part thereof, or to be a correct copy of the transcript of the proceedings had on such investigation so purporting to be taken and transcribed, may be received in evidence by the compensation court with the same effect as if such stenographer or court reporter were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party in interest upon payment of the fee therefor, as provided for transcripts in the district courts of the State of Nebraska.

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, § 48-169; Laws 1986, LB 811, § 102; Laws 1992, LB 360, § 18.

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.

A party filing an application for rehearing under this section is not excused from a late filing due to the temporary relocation of the Nebraska Workers' Compensation Court when adequate notice had been provided to that party with respect to such relocation. *Lopez v. IBP, Inc.*, 264 Neb. 273, 646 N.W.2d 628 (2002).

Negligence on the part of a party's delivery agent will not permit that party to file an application for rehearing outside of the 14 days called for by this section. *Lopez v. IBP, Inc.*, 264 Neb. 273, 646 N.W.2d 628 (2002).

The Nebraska Supreme Court has recognized an exception that allows an appellate court to consider an appeal filed after the statutorily prescribed time for appeal where the appellant was free from neglect and was prevented from having the appeal filed in the appellate court within the statutory period

through the neglect or failure of the proper court official. *Lopez v. IBP, Inc.*, 264 Neb. 273, 646 N.W.2d 628 (2002).

This section is clear that any party who wishes to appeal the order of a single judge of the Nebraska Workers' Compensation Court shall file an application for rehearing before a three-judge panel within 14 days after the date of the single judge's order. If a claimant does not file an application for a rehearing with the compensation court within 14 days after the date of the single judge's order, the order becomes conclusive and final. *Lopez v. IBP, Inc.*, 264 Neb. 273, 646 N.W.2d 628 (2002).

This section and section 48-180 of the Nebraska Workers' Compensation Act are clear that if the court fails to modify its order within 10 days and the parties fail to file an application for review within 14 days of the original order, such order

becomes final and binding upon the parties. *Thach v. Quality Pork International*, 253 Neb. 544, 570 N.W.2d 830 (1997).

Where no appeal is taken, award of single judge is conclusive. *Riedel v. Smith Baking Co.*, 150 Neb. 28, 33 N.W.2d 287 (1948).

When no appeal is taken from award, it is conclusive on all parties at interest except as otherwise provided by statute. *Gilmore v. State*, 146 Neb. 647, 20 N.W.2d 918 (1945).

Right of trial de novo in district court was preserved where notice of intention to appeal was given and where appeal was taken from award of one commissioner direct to district court. *Hansen v. Paxton & Vierling Iron Works*, 135 Neb. 867, 284 N.W. 352 (1939).

Orders of the compensation court have the force and effect of a judgment between the parties, except as modified by the compensation act. *Chilen v. Commercial Casualty Ins. Co.*, 135 Neb. 619, 283 N.W. 366 (1939).

Notice of appeal is intended to give information to opposing party and may be waived when appeal was otherwise properly completed in time required by law. *Callahan v. Allied Mills Inc.*, 128 Neb. 352, 258 N.W. 804 (1935).

Neither county court nor district court has original jurisdiction to determine legality of a claim for compensation under the compensation act. *Zurich General Accident & Liability Ins. Co. v. Walker*, 128 Neb. 327, 258 N.W. 550 (1935).

Posting notice of appeal to commissioner within statutory time is not equivalent to filing. *Swanson v. Village of Shickley*, 125 Neb. 664, 251 N.W. 821 (1933).

Under prior act, notice was required to be filed within seven days of award on appeal to district court. *Duering v. Village of Upland*, 125 Neb. 659, 251 N.W. 819 (1933).

Final order of compensation commissioner denying compensation is absolute bar to subsequent suit based on same cause of action if not appealed from. *Gray v. Burdin*, 125 Neb. 547, 250 N.W. 907 (1933).

48-171 Order; award; judgment; use of terms.

Except as otherwise provided in sections 48-192 to 48-1,109, the words order, award, and judgment, as used in the Nebraska Workers' Compensation Act, are used interchangeably and are deemed to have the same meaning.

Source: Laws 1935, c. 57, § 12, p. 192; C.S.Supp.,1941, § 48-173; R.S. 1943, § 48-171; Laws 1986, LB 811, § 104.

There is a distinction between findings of the workmen's compensation court and its order, award, or judgment. *Light v. Nebraska Workmen's Compensation Court*, 166 Neb. 540, 89 N.W.2d 833 (1958).

Right of either party to refuse award, order, or judgment of compensation commissioner and demand retrial before com-

penation court is paramount to and exclusive of right of appeal to district court from such decision. *City of Lincoln v. Nebraska Workmen's Compensation Court*, 133 Neb. 225, 274 N.W. 576 (1937).

48-172 Compensation court; no filing fees; exceptions; costs; when allowed.

Except as provided in sections 48-138 and 48-139, there shall be no filing fees charged by the Nebraska Workers' Compensation Court. When a reasonable attorney's fee is allowed the employee against the employer as provided in section 48-125, the compensation court shall further assess against the employer as costs of the employee the cost of depositions if admitted into evidence and may further assess against the employer the fees and mileage for necessary witnesses attending the proceedings at the instance of the employee. Both the necessity for the witness and the reasonableness of the fees shall be approved by the compensation court. Such witnesses shall be reimbursed for their necessary mileage at the rate provided in section 81-1176.

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, § 48-172; Laws 1983, LB 18, § 6; Laws 1986, LB 811, § 105; Laws 1993, LB 757, § 26.

This section does not authorize taxation of the fee of an expert witness as an item of cost. *Inserra v. Village Inn Pancake House*, 197 Neb. 168, 247 N.W.2d 625 (1976).

Guardian ad litem fees were payable from fund awarded under Workmen's Compensation Act. *Copple v. Bowlin*, 172 Neb. 467, 110 N.W.2d 117 (1961).

48-173 Petition; filing; contents; medical finding required.

Procedure before the Nebraska Workers' Compensation Court shall be as follows: In all cases involving a dispute with reference to workers' compensation, either party at interest, without cost, either in person or by attorney, may file with the compensation court a petition setting forth the names and places of residence of the parties and the facts relating to the employment at the time of

the injury for which compensation is claimed, the injury in its extent and character, the amount of wages being received at the time of the injury, the knowledge of or notice to the employer of the occurrence of such injury, and such other facts as may be considered necessary for the information of the compensation court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

No petition may be filed with the compensation court solely on the issue of reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01.

Source: Laws 1935, c. 57, § 13, p. 192; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-173; Laws 1978, LB 649, § 5; Laws 1986, LB 811, § 106; Laws 1993, LB 757, § 27; Laws 1998, LB 1010, § 5.

This section sets out the requirements of a petition in the compensation court. *Shada v. Whitney*, 172 Neb. 220, 109 N.W.2d 167 (1961).

Petition is required to set out the matters in dispute. *Towner v. Western Contracting Corp.*, 164 Neb. 235, 82 N.W.2d 253 (1957).

Either party at interest may initiate workmen's compensation proceeding. *Fidelity & Casualty Co. v. Kennard*, 162 Neb. 220, 75 N.W.2d 553 (1956).

Either party may file petition in case of dispute. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

This section provides for the filing of petition in the compensation court. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Petition must be filed within one year from date of accident unless true character of the injuries was not known at the time. *Surratt v. Otoe Food Products Co.*, 146 Neb. 854, 21 N.W.2d 862 (1946).

48-174 Summons; service; return.

Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within seven days after the date of issue. An acknowledgment on the summons or the voluntary appearance of a defendant is equivalent to service.

Source: Laws 1935, c. 57, § 13, p. 192; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-174; Laws 1978, LB 649, § 6; Laws 2000, LB 1221, § 13.

Where on appeal there was timely service in fact of petition on adverse party and no prejudice resulted from the use of regular mail instead of certified or registered mail, motion to dismiss was properly overruled. *Bourn v. James*, 191 Neb. 635, 216 N.W.2d 739 (1974).

Service of summons may be made either as in civil cases or by registered mail. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

48-175 Summons; service.

(1) Whenever the post office address of the defendant is known or may be ascertained by the officer or person charged with the duty of serving the same, such summons may be served by such officer or person by certified mail.

(2) In the event the party to be served, in accordance with subsection (1) of this section, is a corporation, a partnership, or a limited liability company, a certified copy of the summons shall be directed to the proper officer, agent, or member of such organization who is authorized by law to accept service of process.

(3) The officer in making his or her return of all processes served, in accordance with subsection (1) or (2) of this section, shall append to and file with the original return the return receipt as herein set forth. Any judge of the

Nebraska Workers' Compensation Court may serve or cause to be served such summons by certified mail as provided in this section.

Source: Laws 1935, c. 57, § 13, p. 192; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-175; Laws 1953, c. 163, § 2, p. 513; Laws 1957, c. 242, § 41, p. 853; Laws 1983, LB 447, § 69; Laws 1986, LB 811, § 107; Laws 1993, LB 121, § 285.

Where on appeal there was timely service in fact of petition on adverse party and no prejudice resulted from the use of regular mail instead of certified or registered mail, motion to dismiss was properly overruled. *Bourn v. James*, 191 Neb. 635, 216 N.W.2d 739 (1974).

Certified copy of summons must be served. *Clark v. Village of Hemingford*, 147 Neb. 1044, 26 N.W.2d 15 (1947).

Voluntary appearance entered by Attorney General in compensation case does not waive immunity of state from suit. *Anstine v. State*, 137 Neb. 148, 288 N.W. 525 (1939).

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 subsections (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.

48-176 Answer; filing; contents.

Within seven days after the return day of such summons the party at interest upon whom the same is served shall file an answer to such petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-176; Laws 1978, LB 649, § 7.

Answer is required to state the contention of the defendant with respect to the matters in dispute. *Shada v. Whitney*, 172 Neb. 220, 109 N.W.2d 167 (1961).

Evidence of second injury was admissible under general denial. *Towner v. Western Contracting Corp.*, 164 Neb. 235, 82 N.W.2d 253 (1957).

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.

The procedure to dismiss a case under this section is analogous to a voluntary dismissal and removes the case from the compensation court's docket. *Fentress v. Westin, Inc.*, 304 Neb. 619, 935 N.W.2d 911 (2019).

This section gives a workers' compensation plaintiff the explicit right to dismiss the cause without prejudice so long as the plaintiff is represented by counsel and requests dismissal before the final submission of the case to the court. *Interiano-Lopez v. Tyson Fresh Meats*, 294 Neb. 586, 883 N.W.2d 676 (2016).

This section is not jurisdictional; it simply specifies the venue for hearing the cause. *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011).

The right of a plaintiff in a workers' compensation case to voluntary dismissal is a right that is not a matter of judicial grace or discretion. *Knapp v. Village of Beaver City*, 273 Neb. 156, 728 N.W.2d 96 (2007).

A plaintiff in a suit before the Workers' Compensation Court does not have an absolute right to a dismissal of the suit without

prejudice. *Grady v. Visiting Nurse Assn.*, 246 Neb. 1013, 524 N.W.2d 559 (1994).

Absent statutory disqualification, bias, or other cause shown, it is not prejudicial for the one judge of the Workmen's Compensation Court to serve as one of the judges of that court on rehearing. *Schademann v. Casey*, 194 Neb. 149, 231 N.W.2d 116 (1975).

This and succeeding sections prescribe two procedures for processing workmen's compensation claims carrying over rules that governed the compensation commissioner. *Adler v. Jerryco Motors, Inc.*, 187 Neb. 757, 193 N.W.2d 757 (1972).

Initial hearing is before one judge of the workmen's compensation court. *Light v. Nebraska Workmen's Compensation Court*, 166 Neb. 540, 89 N.W.2d 833 (1958).

Compensation case may be heard by stipulation of parties in appeal from compensation court and by the district court for any county, and a party invoking the court's jurisdiction is estopped to object thereto afterward. *McCall v. Hamilton County Farmers Telephone Assn.*, 135 Neb. 70, 280 N.W. 254 (1938).

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.

Hearing before one judge is authorized. *Shada v. Whitney*, 172 Neb. 220, 109 N.W.2d 167 (1961).

Where there is no increase or decrease in incapacity to work, award is conclusive unless reversed or modified on appeal. *Riedel v. Smith Baking Co.*, 150 Neb. 28, 33 N.W.2d 287 (1948).

When a judge of the compensation court enters a judgment which he is authorized by law to make, such judgment is

conclusive on all parties at interest. *Gilmore v. State*, 146 Neb. 647, 20 N.W.2d 918 (1945).

A party invoking the court's jurisdiction in a case where a court has jurisdiction of the subject matter is estopped to object thereto afterward. *McCall v. Hamilton County Farmers Telephone Assn.*, 135 Neb. 70, 280 N.W. 254 (1938).

Awards for compensation cannot be based on possibilities. *O'Connor v. Abbott*, 134 Neb. 471, 279 N.W. 207 (1938).

Parties are entitled to a final determination of the character of the disability, the full amount to be recovered and times when

this amount shall be paid. *Dymak v. Haskins Bros. & Co.*, 132 Neb. 308, 271 N.W. 860 (1937).

48-178.01 Payment of compensation when claimant's right to compensation not in issue.

Whenever any petition is filed and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer, a workers' compensation insurer, or a risk management pool or between two or more employers, workers' compensation insurers, or risk management pools, the Nebraska Workers' Compensation Court may order payment of compensation to be made immediately by one or more of such employers, workers' compensation insurers, or risk management pools. When the issue is finally resolved, an employer, workers' compensation insurer, or risk management pool held not liable shall be reimbursed for any such payments by the employer, workers' compensation insurer, or risk management pool held liable.

Source: Laws 1971, LB 572, § 17; Laws 1986, LB 811, § 111; Laws 1987, LB 398, § 47; Laws 2005, LB 238, § 15.

Cross References

Risk management pool, defined, see section 44-4303.

The Workers' Compensation Court has no jurisdiction to determine workers' compensation insurance coverage disputes. *Thomas v. Omega Re-Bar, Inc.*, 234 Neb. 449, 451 N.W.2d 396 (1990).

This section applies only where the claimant's right to recovery was not at issue and the compensation court has entered an order of immediate payment. *Bryson v. Vickers, Inc.*, 7 Neb. App. 595, 584 N.W.2d 44 (1998).

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, LB 151, § 11.

The office of an order nunc pro tunc is to correct a record which has been made so that it truly records the actions had, which, through inadvertence or mistake, were not truly recorded. It is not the function of an order nunc pro tunc to change or revise a judgment or order, or to set aside a judgment actually rendered, even though such order was not the order intended. *Green v. Drivers Mgmt., Inc.*, 263 Neb. 197, 639 N.W.2d 94 (2002).

This section and section 48-170 of the Nebraska Workers' Compensation Act are clear that if the court fails to modify its order within 10 days and the parties fail to file an application for review within 14 days of the original order, such order becomes final and binding upon the parties. *Thach v. Quality Pork International*, 253 Neb. 544, 570 N.W.2d 830 (1997).

In the absence of specific statutory authority to correct an ambiguity by a procedure other than as described in this section, the compensation court does not have authority to enter an order revising one of its awards. *Black v. Sioux City Foundry Co.*, 224 Neb. 824, 401 N.W.2d 679 (1987).

In Nebraska, in civil cases, a court of general jurisdiction has the inherent power to vacate or modify its own judgment during the term at which it was rendered. This is a common law rule which does not apply to statutory tribunals such as the compensation court. *Smith v. Fremont Contract Carriers*, 218 Neb. 652, 358 N.W.2d 211 (1984).

The Workmen's Compensation Court is a tribunal of limited and special jurisdiction and has only such authority as has been conferred on it by statute. A decree or award in a compensation case is final unless the petitioner seeking to reopen the case can bring it within the terms of any statute to that effect. *Smith v. Fremont Contract Carriers*, 218 Neb. 652, 358 N.W.2d 211 (1984).

Power is granted to workmen's compensation court to correct ambiguity or clerical error on its own motion. *Light v. Nebraska Workmen's Compensation Court*, 166 Neb. 540, 89 N.W.2d 833 (1958).

The 2011 amendment to this section eliminated a limitation to a modification under this section to permit a compensation

court to modify only through nunc pro tunc orders and expanded a compensation court's ability to modify a previously entered judgment. *Carr v. Ganz*, 26 Neb. App. 14, 916 N.W.2d 437 (2018).

The 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 14 days after the date of such findings, order, award, or judgment. *Yost v. Davita, Inc.*, 23 Neb. App. 482, 873 N.W.2d 435 (2015).

This section is the statutory embodiment of nunc pro tunc principles, and pursuant to this section, the Nebraska Workers' Compensation Court is statutorily authorized to issue proper nunc pro tunc orders. *Walsh v. City of Omaha*, 11 Neb. App. 747, 660 N.W.2d 187 (2003).

The Workers' Compensation Court lacks jurisdiction to consider a motion seeking modification of judgment if the motion is filed more than 10 days after entry of the judgment that is to be modified. *Dobson-Grosz v. University of Neb. Med. Ctr.*, 1 Neb. App. 434, 499 N.W.2d 83 (1993).

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.

Appeals from a workers' compensation trial court to a review panel are controlled by the statutory provisions found in the Nebraska Workers' Compensation Act, and specifically, section 48-179 and this section, which provide for the review procedure for appeals brought from the trial court to the review panel. Section 48-179 and this section pertain to the same subject matter and must be construed, if at all possible, as consistent with one another and in a sensible manner. Notwithstanding the individuation of examples of rulings listed in section 48-179, this section makes clear that when reading the two provisions together, an order appealed from a workers' compensation trial court to a review panel must be a "final order" of the workers' compensation trial court. Neither section 48-179 nor this section defines a "final order" for purposes of a workers' compensation appeal from a trial court to a review panel, and accordingly, one must look to section 25-1902, which defines three types of final orders which may be reviewed on appeal, and the case law under it to define "final order" for purposes of an appeal from the trial court to the review panel. *Thompson v. Kiewit Constr. Co.*, 258 Neb. 323, 603 N.W.2d 368 (1999).

On appeal to district court, the filing of a petition and transcript of the proceedings is required. *Spangler v. Terry Carpenter, Inc.*, 177 Neb. 740, 131 N.W.2d 159 (1964).

Motion for new trial is not a necessary prerequisite to trial de novo on appeal. *Peek v. Ayres Auto Supply*, 155 Neb. 233, 51 N.W.2d 387 (1952).

Filing of verified petition on appeal is required. *Solheim v. Hastings Housing Co.*, 151 Neb. 264, 37 N.W.2d 212 (1949).

Both petition and transcript must be filed within fourteen days to confer jurisdiction on appeal. *Geller v. Elastic Stop Nut Corporation*, 147 Neb. 330, 23 N.W.2d 271 (1946).

Appeal from award of compensation court sitting en banc is complete when petition and transcript are filed in district court within fourteen days. *Henderson v. Wilson*, 137 Neb. 693, 291 N.W. 96 (1940).

On appeal from the compensation court, the bill of exceptions need not be served upon the adverse party or his attorney before it is filed in district court. *Wrede v. City of David City*, 137 Neb. 194, 288 N.W. 542 (1939).

An award wherein the court ordered a further hearing on medical expenses and mileage is not a final order. *Hamm v. Champion Manuf. Homes*, 11 Neb. App. 183, 645 N.W.2d 571 (2002).

48-182.01 Repealed. Laws 1986, LB 811, § 149.

48-183 Repealed. Laws 1975, LB 187, § 19.

48-184 Repealed. Laws 1975, LB 187, § 19.

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.

1. Perfecting appeal
2. Review
3. Miscellaneous

1. Perfecting appeal

After final judgment, the filing of a motion to withdraw a party's rest is not treated as a motion for a new trial and fails to extend the time for appeal. *Battiato v. Falstaff Brewing Corp.*, 212 Neb. 474, 323 N.W.2d 105 (1982).

Appeal may be taken within thirty days from overruling of motion for a new trial. *Meester v. Schultz*, 151 Neb. 614, 38 N.W.2d 739 (1949).

Method of perfecting appeal to Supreme Court, including settling bill of exceptions, is governed by general laws regulating appeals in actions at law. *Ratay v. Wylie*, 147 Neb. 201, 22 N.W.2d 622 (1946).

Appeal to Supreme Court from district court is governed by general laws regulating appeals except the appeal must be perfected within thirty days from entry of judgment. *Adkisson v. Gamble*, 143 Neb. 417, 9 N.W.2d 711 (1943).

Upon appeal to Supreme Court in a compensation case, jurisdiction is conferred where transcript is filed within thirty days and bill of exceptions may be filed thereafter in accordance with general law. *Fallis v. Vogel*, 137 Neb. 598, 290 N.W. 461 (1940).

Appeal from district court should be dismissed for lack of jurisdiction, where transcript in compensation case was not filed within thirty days of the entry of the judgment. *Dobesh v. Associated Asphalt Contractors*, 137 Neb. 1, 288 N.W. 32 (1939).

Statutory fees for filing appeal in Supreme Court do not apply to cases under workmen's compensation law. *Scott v. Dohrse*, 130 Neb. 847, 266 N.W. 709 (1936).

2. Review

Under this section, 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. *Picard v. P & C Group 1*, 306 Neb. 292, 945 N.W.2d 183 (2020).

Pursuant to this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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. *Aboytes-Mosqueda v. LFA Inc.*, 306 Neb. 277, 944 N.W.2d 765 (2020); *Moss v. C&A Indus.*, 25 Neb. App. 877, 915 N.W.2d 615 (2018); *Moyers v. International Paper Co.*, 25 Neb. App. 282, 905 N.W.2d 87 (2017).

Findings of fact made by the Workers' Compensation Court have the same force and effect as a jury verdict and will not be set aside unless clearly erroneous. *Hintz v. Farmers Co-op Assn.*, 297 Neb. 903, 902 N.W.2d 131 (2017); *Hull v. Aetna Ins. Co.*, 247 Neb. 713, 529 N.W.2d 783 (1995).

An appellate court may modify an award of the compensation court when there is not sufficient competent evidence in the record to support the award. *Nichols v. Fairway Bldg. Prods.*, 294 Neb. 657, 884 N.W.2d 124 (2016).

Where there was sufficient evidence to support a factual finding that knee surgery was not required by the prior work-related injury, a three-judge panel of the Workers' Compensation Court did not have grounds under this section to reverse the decision of a single judge of the Workers' Compensation Court denying compensability for the surgery. *Pearson v. Archer-Daniels-Midland Milling Co.*, 285 Neb. 568, 828 N.W.2d 154 (2013).

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only upon the grounds set forth in this section. *Worline v. ABB/Alstom Power Integrated CE Services*, 272 Neb. 797, 725 N.W.2d 148 (2006).

Pursuant to this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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. *Torres v. Atulick Leasing*, 258 Neb. 859, 606 N.W.2d 98 (2000); *Variano v. Dial Corp.*, 256 Neb. 318, 589 N.W.2d 845 (1999); *Crouch v. Goodyear Tire & Rubber Co.*, 255 Neb. 128, 582 N.W.2d 356 (1998); *Owen v. American Hydraulics, Inc.*, 254 Neb. 685, 578 N.W.2d 57 (1998).

This section does not provide for appeal to the Supreme Court or the Court of Appeals without a properly constituted review by

the Workers' Compensation Court. *Hagelstein v. Swift-Eckrich Div. of ConAgra*, 257 Neb. 312, 597 N.W.2d 394 (1999).

The findings of fact made by a workers' compensation court trial judge are not to be disturbed upon appeal to a workers' compensation court review panel unless they are clearly wrong on the evidence or the decision was contrary to law. *McBee v. Goodyear Tire & Rubber Co., Inc.*, 255 Neb. 903, 587 N.W.2d 687 (1999).

This section precludes an appellate court's substitution of its view of the facts for that of the Workers' Compensation Court if the record contains evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Cords v. City of Lincoln*, 249 Neb. 748, 545 N.W.2d 112 (1996).

In testing the sufficiency of evidence to support findings of fact made by the Nebraska Workers' Compensation Court, the evidence must be considered in the light most favorable to the successful party. *Paulsen v. State*, 249 Neb. 112, 541 N.W.2d 636 (1996).

This section precludes an appellate court from substituting its view of the facts for that of the compensation court if the record contains evidence to substantiate the factual conclusions reached by the compensation court. *Surratt v. Watts Trucking*, 249 Neb. 35, 541 N.W.2d 41 (1995).

Factual determinations made by the Workers' Compensation Court will not be set aside on appeal unless such determinations are clearly erroneous. An appellate court may not substitute its view of the facts for that of the compensation court if the record contains evidence to substantiate the factual conclusions reached by the compensation court. *Aken v. Nebraska Methodist Hosp.*, 245 Neb. 161, 511 N.W.2d 762 (1994).

Findings of fact by the Workers' Compensation Court on rehearing have the same force and effect as a jury verdict in a civil case and will not be set aside on appeal where there is evidence sufficient to support them. *Willuhn v. Omaha Box Co.*, 240 Neb. 571, 483 N.W.2d 130 (1992); *McGee v. Panhandle Technical Sys.*, 223 Neb. 56, 387 N.W.2d 709 (1986).

Procedural and evidentiary rulings of the Workers' Compensation Court may predicate reversal or modification of the court's order on appeal if the court in so ruling acted without or in excess of its powers. As the trier of fact, the Workers' Compensation Court is the sole judge of the credibility of witnesses and the weight to be given testimony; furthermore, the appellate court will presume the compensation court resolved any conflicts in the evidence in favor of the successful party. Findings of fact by the Workers' Compensation Court have the same force and effect as a jury verdict and will, therefore, not be set aside unless clearly wrong. *Hernandez v. Hawkins Construction Co.*, 240 Neb. 129, 480 N.W.2d 424 (1992).

Findings of fact by the Nebraska Workers' Compensation Court after rehearing have the same force and effect as a jury verdict in a civil case and will not be set aside on appeal unless clearly wrong. *Cline v. County Seat Lounge*, 239 Neb. 42, 473 N.W.2d 404 (1991); *Brazee v. City of Lincoln*, 234 Neb. 680, 452 N.W.2d 529 (1990); *Elliott v. Midlands Animal Products*, 229 Neb. 823, 428 N.W.2d 920 (1988); *Gilbert v. Sioux City Foundry*, 228 Neb. 379, 422 N.W.2d 367 (1988); *Knudsen v. Metropolitan Utilities Dist.*, 220 Neb. 902, 374 N.W.2d 56 (1985); *Guerra v. Iowa Beef Processors, Inc.*, 211 Neb. 433, 318 N.W.2d 887 (1982); *White v. Father Flanagan's Boys' Home*, 207 Neb. 528, 300 N.W.2d 15 (1980).

Under subsection (4) of this section, an order based on findings of fact made by the compensation court may be reversed if those findings do not support the court's order. *Clobes v. Nebraska Boxed Beef*, 238 Neb. 612, 472 N.W.2d 893 (1991).

To determine whether findings of fact made by the compensation court support an order granting or denying vocational rehabilitation benefits, the Supreme Court must consider the findings of fact in light of section 48-162.01. *Yager v. Bellico Midwest*, 236 Neb. 888, 464 N.W.2d 335 (1991).

Under subsection (4) of this section, an order based on findings of fact made by the compensation court may be reversed if those findings do not support the court's order. *Yager v. Bellico Midwest*, 236 Neb. 888, 464 N.W.2d 335 (1991).

The Workers' Compensation Court's judgment may not be set aside on appeal where there is evidence sufficient to support its judgment. *Bindrum v. Foote & Davies*, 235 Neb. 903, 457 N.W.2d 828 (1990); *Luehring v. Tibbs Constr. Co.*, 235 Neb. 883, 457 N.W.2d 815 (1990).

Regarding facts determined and findings made after rehearing in the compensation court, this section precludes the Supreme Court's substitution of its view of facts for that of the compensation court if the record contains evidence to substantiate the factual conclusions reached by the compensation court. *Gardner v. Beatrice Foods Co.*, 231 Neb. 464, 436 N.W.2d 542 (1989).

The findings of fact of the Nebraska Workers' Compensation Court have the same force and effect as a jury verdict in a civil case and will not be set aside where they are supported by credible evidence and are not clearly wrong. *Kalhorn v. City of Bellevue*, 227 Neb. 880, 420 N.W.2d 713 (1988).

Where the record presents nothing more than conflicting medical testimony, the Supreme Court will not substitute its judgment for that of the Workers' Compensation Court. The nature and number of examinations by a physician are factors affecting credibility of a medical witness and weight to be attached to testimony from such witness. *Vredevelde v. Gelco Express*, 222 Neb. 363, 383 N.W.2d 780 (1986).

The findings of fact made by the Workers' Compensation Court after rehearing will not be set aside unless clearly wrong. *Gast v. Continental Can Co.*, 220 Neb. 456, 370 N.W.2d 172 (1985).

Where there is not sufficient competent evidence to support an award, this court must modify, reverse, or set aside the award. *Hare v. Watts Trucking Service*, 220 Neb. 403, 370 N.W.2d 143 (1985).

Under Nebraska law, it is well settled that findings of fact by the Workmen's Compensation Court on rehearing have the same force and effect as a jury verdict in a civil case and will not be set aside unless clearly wrong. *Rutt v. Midwest Refuse Service*, 220 Neb. 255, 369 N.W.2d 93 (1985); *Paris v. J. A. Baldwin Mfg. Co.*, 216 Neb. 151, 342 N.W.2d 198 (1984); *Earnest v. Lutheran Memorial Hospital*, 211 Neb. 438, 319 N.W.2d 66 (1982); *Shaw v. Gooch Feed Mill Corp.*, 210 Neb. 17, 312 N.W.2d 682 (1981).

The findings of fact made by the Nebraska Workmen's Compensation Court on rehearing have the same force and effect as a jury verdict in a civil case and will not be reversed or set aside unless there is insufficient evidence in the record to warrant the award. *Tranmer v. Mass Merchandisers*, 218 Neb. 151, 352 N.W.2d 610 (1984).

The compensation court's findings of fact after rehearing have the same effect as a jury verdict in a civil case and will not be set aside unless clearly wrong. The decision of the compensation court after rehearing must be considered in the light most favorable to the successful party, and every controverted fact must be decided in its favor. *Noah v. Creighton Omaha Health Care Corp.*, 213 Neb. 169, 328 N.W.2d 203 (1982).

The Supreme Court is not at liberty to substitute its views for those of the Workmen's Compensation Court regarding questions of fact if there is evidence in the record to substantiate its conclusions. *Thomas v. Kayser-Roth Corp.*, 211 Neb. 704, 320 N.W.2d 111 (1982).

Where there is not sufficient competent evidence in the record to warrant the making of the award, or the findings of fact do not support the award, the award must be modified, reversed, or set aside by the Supreme Court on appeal. A workmen's compensation award cannot be based upon possibility or speculation. *Husted v. Peter Kiewit & Sons Constr. Co.*, 210 Neb. 109, 313 N.W.2d 248 (1981).

An award of the Workmen's Compensation Court will be reversed or modified where there is not sufficient evidence in the record to warrant the order, judgment, or award, or the findings of fact do not support the order or award. *Akins v. Happy Hour, Inc.*, 209 Neb. 236, 306 N.W.2d 914 (1981).

The final determination of whether there exists a master and servant relationship is an issue of law for this court and not for

the trier of fact. *Stephens v. Celeryvale Transport, Inc.*, 205 Neb. 12, 286 N.W.2d 420 (1979).

Under the provisions of this section, the findings of fact made by the Nebraska Workmen's Compensation Court after rehearing have the same force and effect as a jury verdict in a civil case. There is no longer any provision in the statutes for de novo review by the Supreme Court of workmen's compensation cases. *Herold v. Constructors, Inc.*, 201 Neb. 697, 271 N.W.2d 542 (1978).

In testing sufficiency of evidence to support findings of fact of Workmen's Compensation Court after rehearing, it must be considered in light most favorable to successful party. *Salinas v. Cyprus Industrial Minerals Co.*, 197 Neb. 198, 247 N.W.2d 451 (1976).

In workmen's compensation cases, the judgment, order, or award will not be modified on appeal for insufficiency of the evidence, if there is reasonable competent evidence to support the findings of fact upon which it is based. *Voycheske v. Osborn*, 196 Neb. 510, 244 N.W.2d 74 (1976).

The Supreme Court in a workmen's compensation case may set aside the judgment of the district court upon grounds provided by statute only which include "(3) the findings of fact are not supported by the evidence as disclosed by the record." *McPhillips v. Knox Constr. Co., Inc.*, 190 Neb. 306, 208 N.W.2d 261 (1973).

In a workmen's compensation proceeding, a district court finding against a party will be set aside if the evidence compels a finding for that party. *Adler v. Jerryco Motors, Inc.*, 187 Neb. 757, 193 N.W.2d 757 (1972).

Under this section, unless the district court acted without or in excess of its powers or the judgment, order, or award was procured by fraud, the judgment, order, or award may be modified or set aside only if the findings of fact do not support it. *Conn v. ITL, Inc.*, 187 Neb. 112, 187 N.W.2d 641 (1971).

If there is reasonable competent evidence to support findings of fact in trial court's judgment, order or award will not be modified for insufficiency of the evidence. Cause will be considered de novo in the Supreme Court only where the findings of fact are not supported by the evidence as disclosed by the record. Conflicting holdings in *Rapp v. Hale*, 170 Neb. 620, 103 N.W.2d 851 (1960), overruled. *Gifford v. Ag Lime, Sand & Gravel Co.*, 187 Neb. 57, 187 N.W.2d 285 (1971).

Supreme Court may only modify or set aside order of district court on four grounds. *Turpin v. State*, 135 Neb. 389, 281 N.W. 800 (1938).

If award for permanent total disability is not supported by the evidence, it will be set aside. *Pillard v. Lincoln Packing Co.*, 133 Neb. 898, 277 N.W. 587 (1938).

Under this section, the judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case and 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. *Coughlin v. County of Colfax*, 27 Neb. App. 41, 926 N.W.2d 675 (2019).

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (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 no 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. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008); *McKay v. Hershey Food Corp.*, 16 Neb. App. 79, 740 N.W.2d 378 (2007); *Davis v. Crete Carrier Corp.*, 15 Neb. App. 241, 725 N.W.2d 562 (2006); *Shade v. Ayars & Ayars, Inc.*, 2 Neb. App. 730, 513 N.W.2d 881 (1994).

An appellate court may not substitute its view of the facts for that of the Workers' Compensation Court if the record contains

sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Nerison v. National Fire Ins. Co. of Hartford*, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

This section precludes an appellate court's substitution of its view of the facts for that of the Workers' Compensation Court if the record contains sufficient evidence to substantiate the factual conclusions reached by the Workers' Compensation Court. *Godsey v. Casey's General Stores*, 15 Neb. App. 854, 738 N.W.2d 863 (2007).

In determining whether to affirm, modify, reverse, or set aside a judgment of a Workers' Compensation Court review panel, a higher appellate court reviews the findings of the trial judge who conducted the original hearing. *Mendoza v. Pepsi Cola Bottling Co.*, 8 Neb. App. 778, 603 N.W.2d 156 (1999).

In an appeal from a review where the panel affirms the order of the trial judge, the higher appellate court may still modify, revise, or set aside the order of the review panel if the panel was clearly wrong in failing to find that (1) the trial judge acted without or in excess of his or her 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 trial judge do not support the order or award. *Fordham v. West Lumber Co.*, 2 Neb. App. 716, 513 N.W.2d 52 (1994).

If a Workers' Compensation Court review panel makes different findings of fact from those of the trial judge when there is evidence in the record before the trial judge to support the judge's findings, then the review panel has acted in excess of its powers. *Pearson v. Lincoln Telephone Co.*, 2 Neb. App. 703, 513 N.W.2d 361 (1994).

3. Miscellaneous

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

A direct appeal to the Supreme Court from the order of a single judge of the Workers' Compensation Court is not authorized. *Schmidt v. Shoftstall Alfalfa*, 239 Neb. 248, 475 N.W.2d 523 (1991).

An award of vocational rehabilitation benefits must be supported by evidence which shows the workman is unable to perform work for which he has previous training and experience. *Bender v. Norfolk Iron & Metal Co.*, 224 Neb. 706, 400 N.W.2d 859 (1987).

A good-faith conflict due to self-contradiction of an expert's opinions presents a question to be resolved by the trier of fact. *Vredevelde v. Gelco Express*, 222 Neb. 363, 383 N.W.2d 780 (1986).

Workmen's Compensation Court denial of benefits, to applicant with blood alcohol content of .175 percent when injured, affirmed. *Sandage v. Adolf's Roofing, Inc.*, 198 Neb. 539, 254 N.W.2d 77 (1977).

A compensable injury to the ball and socket of the hip joint, where the residual impairment is not limited to the leg, is not a schedule injury under section 48-121, subdivision (3), but a disability under subdivision (1) or (2) relating to earning capacity and employability. *Jeffers v. Pappas Trucking, Inc.*, 198 Neb. 379, 253 N.W.2d 30 (1977).

An accidental injury sustained by an employee on premises where employed, occurring during lunch period while employee is going to or coming from work, is an injury arising out of and in the course of employment. *Buck v. Iowa Beef Processors, Inc.*, 198 Neb. 125, 251 N.W.2d 875 (1977).

Disability under this act refers to employability and earning capacity rather than loss of bodily functions. *Johnson v. Village of Winnebago*, 197 Neb. 845, 251 N.W.2d 176 (1977).

Compensation court disability award reversed where claimant suffered no objective injuries and only medical evidence negated disability assertion. *Evans v. Gear Drilling Co.*, 197 Neb. 841, 251 N.W.2d 173 (1977).

Filing of transcript on appeal to Supreme Court was duty of clerk of district court. *Miller v. Peterson*, 165 Neb. 344, 85 N.W.2d 700 (1957).

Powers of district judge may be exercised at chambers. *Muel-ler v. Keeley*, 163 Neb. 613, 80 N.W.2d 707 (1957).

Hearsay evidence admitted without objection may sustain a finding of fact in compensation case. *Maul v. Iowa-Nebraska Light & Power Co.*, 137 Neb. 128, 288 N.W. 532 (1939).

48-186 Accidents occurring outside state; hearing; location; exception.

In all cases when the accident occurred outside of the State of Nebraska, the hearing before a judge of the Nebraska Workers' Compensation Court shall be at Lincoln, Nebraska, or in any other county in the state at the discretion of the compensation court, unless otherwise stipulated by the parties at least fourteen days before the date of hearing.

Source: Laws 1935, c. 57, § 15, p. 195; C.S.Supp.,1941, § 48-176; R.S. 1943, § 48-186; Laws 1975, LB 187, § 15; Laws 1986, LB 811, § 116; Laws 1989, LB 261, § 1.

Where accident occurred in another state, appeal was taken to district court for Lancaster County. *Krajeski v. Beem*, 157 Neb. 586, 60 N.W.2d 651 (1953).

Nebraska act applies to workmen who are employed in Ne-braska industries, even though injury may occur in performance

of duties of workman in another state. *McRae v. Ulrich*, 147 Neb. 214, 22 N.W.2d 697 (1946).

48-187 Filing fees; clerks of courts; what permitted.

No filing fees shall be charged by the clerk of any court for any service required by the Nebraska Workers' Compensation Act except as provided in sections 48-138, 48-139, and 48-188.

Source: Laws 1935, c. 57, § 14, p. 195; C.S.Supp.,1941, § 48-175; R.S. 1943, § 48-187; Laws 1959, c. 140, § 6, p. 548; Laws 1961, c. 235, § 1, p. 694; Laws 1961, c. 157, § 2, p. 481; Laws 1986, LB 811, § 117; Laws 1993, LB 757, § 28.

No filing fee is required in workmen's compensation cases. *Elliott v. Gooch Feed Mill Co.*, 147 Neb. 309, 23 N.W.2d 262 (1946).

Filing fees for appeals under Workmen's Compensation Act are not required. *Lee v. Lincoln Cleaning & Dye Works*, 144 Neb. 659, 14 N.W.2d 227 (1944).

All costs other than filing fees are taxable, and bond or cash deposit must be provided in perfecting appeal to Supreme Court. *Hoffman v. State*, 142 Neb. 821, 8 N.W.2d 200 (1943).

The Workmen's Compensation Act, being complete and independent in itself, amends the statutory provisions heretofore existing relating to fees on filing appeals in Supreme Court, and filing fee is not required on filing appeal to Supreme Court in compensation case. *Scott v. Dohrse*, 130 Neb. 847, 266 N.W. 709 (1936).

48-188 Order, award, or judgment; filed with district court; filing fee; effect.

Any order, award, or judgment by the Nebraska Workers' Compensation Court, or any judge thereof, which is certified by the clerk of the compensation court or any order, award, or judgment made pursuant to the Nebraska Workers' Compensation Act by the Court of Appeals or Supreme Court which is certified by the Clerk of the Supreme Court may, as soon as the same becomes conclusive upon the parties at interest, be filed with the district court of any county or counties in the State of Nebraska upon the payment of a fee of two dollars to the clerk of the district court or courts where such order, award, or judgment is filed. Upon filing, such order, award, or judgment shall have the same force and effect as a judgment of such district court or courts and all proceedings in relation thereto shall thereafter be the same as though the order,

award, or judgment had been rendered in a suit duly heard and determined by such district court or courts.

Source: Laws 1935, c. 57, § 16, p. 196; C.S.Supp.,1941, § 48-177; R.S. 1943, § 48-188; Laws 1951, c. 153, § 2, p. 623; Laws 1975, LB 187, § 16; Laws 1986, LB 811, § 118; Laws 1991, LB 732, § 113; Laws 2005, LB 13, § 30.

The date on which a workers' compensation court award is filed in a district court pursuant to this section is the date of the judgment for purposes of computing when the judgment becomes dormant under section 25-1515. *Weber v. Gas 'N Shop*, 278 Neb. 49, 767 N.W.2d 746 (2009).

The dormancy provisions of section 25-1515 apply to an award of the Nebraska Workers' Compensation Court which is filed in the district court pursuant to this section, and the date on which a workers' compensation award is filed in district court is the date of judgment for purposes of computing when the judgment becomes dormant. *Allen v. Immanuel Med. Ctr.*, 278 Neb. 41, 767 N.W.2d 502 (2009).

This section has a nunc pro tunc, or "now for then," effect. *Koterzina v. Copple Chevrolet*, 249 Neb. 158, 542 N.W.2d 696 (1996).

Appellate award of attorney fees could be enforced under this section, where party had filed a copy of the award from the Workers' Compensation Court and had entered the appellate award into evidence. An award by the Supreme Court becomes "conclusive upon the parties" when it issues a mandate. *Sherard v. State*, 244 Neb. 743, 509 N.W.2d 194 (1993).

Workmen's Compensation Act, being complete and independent in itself, amends statutes already existing relative to filing fees without violating the constitutional provision relating to amendments, and no filing fees are required in compensation cases. *Scott v. Dohrse*, 130 Neb. 847, 266 N.W. 709 (1936).

48-189 Repealed. Laws 1951, c. 155, § 1.

48-190 Suit against state or governmental agency; summons; service.

The state and governmental agencies created by the state may be sued in the Nebraska Workers' Compensation Court upon claims for compensation benefits under the Nebraska Workers' Compensation Act in the same manner as provided by such act for suits against individuals and corporations. In such proceedings summons issued by the compensation court shall be served in the manner provided for service of a summons in section 25-510.02. The issuance and service of summons in such manner shall be binding upon the state and such agencies in such actions, and the Attorney General is hereby authorized and empowered to waive the issuance and service of summons and enter voluntary appearance in such suits against the State of Nebraska.

Source: Laws 1940, Spec. Sess., c. 1, § 1, p. 53; C.S.Supp.,1941, § 48-180; R.S.1943, § 48-190; Laws 1983, LB 447, § 70; Laws 1986, LB 811, § 119; Laws 1997, LB 165, § 3.

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.

The plain language of this section is broad enough to include transactions between the parties. *Herrington v. P.R. Ventures*, 279 Neb. 754, 781 N.W.2d 196 (2010).
not only transactions between a party and the court, but also

PART V

CLAIMS AGAINST THE STATE

48-192 Purpose of sections.

The Legislature declares that it is its intent and purpose through sections 48-192 to 48-1,109 to provide uniform procedures for the bringing of workers' compensation claims against the state, and that the procedures provided by sections 48-192 to 48-1,109 shall be used to the exclusion of all others.

Source: Laws 1971, LB 390, § 1; Laws 1986, LB 811, § 121.

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.

48-198 Suits; filing; attorney's fee; expenses; allowance.

Suits shall be brought in the Nebraska Workers' Compensation Court as set out in the Nebraska Workers' Compensation Act, and the compensation court shall in each case designate and allow the amount of the attorney's fee and expenses to be paid from, but not in addition to, the award or judgment to the attorney representing the employee or his or her personal representatives, except as provided in section 48-125.

Source: Laws 1971, LB 390, § 7; Laws 1986, LB 811, § 127.

48-199 Suits; liability of state.

In all suits brought under sections 48-192 to 48-1,109, the state shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue against the state or any state agency, and disposition of or offer to settle any claim made under sections 48-192 to 48-1,109 shall not be competent evidence of liability of the state or any employee or amount of damages.

Source: Laws 1971, LB 390, § 8.

Under former law, in order to harmonize this section and sections 48-1,102 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds \$50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award

became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. *Soto v. State*, 270 Neb. 40, 699 N.W.2d 819 (2005).

One of the tests of compensability under the Workmen's Compensation Act, in cases related to recreational or social activities, is whether the employer derives substantial direct benefit from the activity. *Kueth v. State*, 191 Neb. 167, 214 N.W.2d 380 (1974).

48-1,100 Attorney General; represent state; duties; powers.

The Attorney General shall represent the state in any suit brought under sections 48-192 to 48-1,109, and is authorized to compromise or settle any such suit, with the approval of the Nebraska Workers' Compensation Court.

Source: Laws 1971, LB 390, § 9; Laws 1975, LB 187, § 17; Laws 1986, LB 811, § 128.

48-1,101 Attorney General; delegation of powers and duties.

The Attorney General may authorize the deputy attorney general in charge of the Claims Division of the Department of Justice to perform any of the duties imposed upon the Attorney General by sections 48-192 to 48-1,109, and may employ other persons, firms, or corporations to investigate claims under sections 48-192 to 48-1,109.

Source: Laws 1971, LB 390, § 10.

48-1,102 Award or judgment; payment; procedure.

Any final, nonappealable award or judgment in favor of a claimant under sections 48-192 to 48-1,109 shall be certified by the Attorney General to the Risk Manager and to the Director of Administrative Services. The Director of Administrative Services shall promptly issue his or her warrant for payment of such award or judgment out of the Workers' Compensation Claims Revolving Fund, if sufficient money is available in such fund, except that no portion in excess of one hundred thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. Notice of any portion of an award or judgment in excess of one hundred thousand dollars shall be delivered by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable. Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written receipt by the claimant in a form provided by the Attorney General.

Source: Laws 1971, LB 390, § 11; Laws 1986, LB 811, § 129; Laws 1994, LB 1211, § 2; Laws 2005, LB 13, § 31.

Under former law, in order to harmonize this section and sections 48-199 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds \$50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. *Soto v. State*, 270 Neb. 40, 699 N.W.2d 819 (2005).

Under former law, with respect to that portion of a workers' compensation award against the State which exceeds \$50,000, the 30-day period specified in subsection (1) of section 48-125 does not begin until the first day after the judgment becomes final on which the State could request review and appropriation pursuant to this section during a regular session of the Legislature. A waiting-time penalty may be assessed pursuant to section 48-125 if payment is not made within 30 calendar days thereafter. *Soto v. State*, 269 Neb. 337, 693 N.W.2d 491 (2005).

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.

48-1,105 Immunity of state reserved; exception.

From and after August 27, 1971, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on workers' compensation claims except as authorized in sections

48-192 to 48-1,109. The remedies provided by sections 48-192 to 48-1,109 in such cases shall be exclusive.

Source: Laws 1971, LB 390, § 14; Laws 1986, LB 811, § 131.

48-1,106 Sections, how construed.

Nothing in sections 48-192 to 48-1,109 shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a workers' compensation claim as defined in sections 48-192 to 48-1,109.

Source: Laws 1971, LB 390, § 15; Laws 1986, LB 811, § 132.

48-1,107 Insurance; Risk Manager; purchase; when.

The Risk Manager may, if after proper investigation he or she deems it to be in the best interests of the state, purchase a policy or policies of insurance for investigation, servicing, and payment, or any one or two of such factors, of workers' compensation to protect the agencies and their employees. Such policy or policies shall contain such conditions, requirements, limitations, and amounts deemed necessary by the Risk Manager. The Risk Manager shall purchase such policy or policies by public letting and payment shall be made therefor out of the State Insurance Fund created pursuant to section 81-8,239.02.

Source: Laws 1971, LB 390, § 16; Laws 1981, LB 273, § 14; Laws 1986, LB 811, § 133; Laws 2000, LB 1221, § 17.

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.

48-1,109 Employees; information; furnish; refusal; effect.

When any employee is injured in any accident or suffers any occupational disease arising out of or in the course of his or her employment, such employee as soon as practicable shall report full information on such occurrence to the head of the agency by which he or she is employed. The head of the agency shall furnish immediately all available information on such occurrence to the Risk Manager. All employees shall cooperate fully with the Attorney General in the investigation of all workers' compensation claims. Failure to comply with this section shall constitute grounds for dismissal from employment.

Source: Laws 1971, LB 390, § 18; Laws 1972, LB 1334, § 4; Laws 1981, LB 273, § 15; Laws 1986, LB 811, § 135.

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.

The hearing on a motion to enforce an award of compensation is the hearing on the merits referenced in this section. The hearing prior to the entry of the award is not the hearing on the merits referenced in this section. *DeLeon v. Reinke Mfg. Co.*, 287 Neb. 419, 843 N.W.2d 601 (2014).

PART VII

COMPENSATION COURT CASH FUND

48-1,113 Insurance company and risk management pool; annual payment; amount; Director of Insurance; powers and duties.

Every insurance company which is transacting workers' compensation insurance business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the gross amount of direct writing premiums received by the company during the preceding calendar year for workers' compensation insurance business transacted in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the annual contributions received by the pool to provide workers' compensation coverage less any amount paid for excess or aggregate workers' compensation insurance during the immediately preceding calendar year. For the purpose of calculating the amount due, a pool which has a scheme of operations that contemplates a return of a portion of the contributions of pool members without such members being claimants under the pool's insuring agreements may deduct such return contributions and any dividends paid during the immediately preceding calendar year that are attributable to workers' compen-

sation. The computation of the amount shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company or the pool's chief operating officer attesting the accuracy of the computation. The department shall furnish the forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department.

Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid. After notice and hearing in accordance with the Administrative Procedure Act, the Director of Insurance may rescind or refuse to reissue the certificate of authority of any company which fails to remit the amount due.

The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Compensation Court Cash Fund, except that (1) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account in the state treasury until disposition of the controversy and (2) one percent of the amounts received shall be credited to the Department of Insurance to cover the costs of administration.

Source: Laws 1993, LB 757, § 19; Laws 1999, LB 259, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

48-1,114 Self-insurer; annual payment; amount.

Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and is issued a permit to self-insure shall remit to the State Treasurer for credit to the Compensation Court Cash Fund an annual amount equal to one and one-quarter percent of the prospective loss costs for like employment but in no event less than one hundred 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.

Source: Laws 1993, LB 757, § 20; Laws 1999, LB 216, § 17.

48-1,115 Other payments; cumulative.

The amounts required to be paid by insurance companies, risk management pools, and self-insurers under sections 48-1,113 and 48-1,114 shall be in addition to any other amounts, either in taxes, assessments, or otherwise, required by any other law of this state.

Source: Laws 1993, LB 757, § 21.

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.

48-1,117 Compensation Court Cash Fund; accounting; abatement of contributions.

The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Compensation Court Cash Fund setting forth the balance in the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance in the fund on hand as of the last day of the preceding month.

At the close of business on June 30 of any year, if the balance in the fund is equal to or exceeds three times the sum expended and encumbered in the fiscal year then ending, the contributions to the fund pursuant to sections 48-1,113 and 48-1,114 shall abate for the calendar year next ensuing and only for that year and the compensation court shall notify all self-insurers and the Director of Insurance who shall notify all workers' compensation insurers and risk management pools of such abatement and of the date when such contributions shall resume. No abatement shall ever extend beyond one year.

Source: Laws 1993, LB 757, § 23; Laws 2005, LB 238, § 16.

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

Cross References

Constitutional provisions:

Labor organizations:

- Closed shop not permitted, see Article XV, section 13, Constitution of Nebraska.
- Construction of provisions, see Article XV, section 15, Constitution of Nebraska.
- Definition of, see Article XV, section 14, Constitution of Nebraska.
- Legislation permitted, see Article XV, section 15, Constitution of Nebraska.
- No denial of employment, see Article XV, section 13, Constitution of Nebraska.

Women and children, employment of:

- Minimum wage, see Article XV, section 8, Constitution of Nebraska.
- Regulation of, see Article XV, section 8, Constitution of Nebraska.

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.
- 48-204. Repealed. Laws 1969, c. 398, § 1.
- 48-205. Repealed. Laws 1969, c. 398, § 1.
- 48-206. Repealed. Laws 1969, c. 398, § 1.
- 48-207. Repealed. Laws 1969, c. 398, § 1.
- 48-208. Repealed. Laws 1969, c. 398, § 1.
- 48-209. Repealed. Laws 2020, LB1016, § 12.
- 48-210. Repealed. Laws 2020, LB1016, § 12.
- 48-211. Repealed. Laws 2020, LB1016, § 12.
- 48-212. Lunch hour; requirements; applicability.
- 48-213. Lunch hour; violation; penalty.
- 48-214. Collective bargaining; race or color discrimination prohibited.
- 48-215. Military supplies; production; distribution; discrimination prohibited.
- 48-216. Military supplies; discrimination; violation; penalty.
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- 48-218. Labor organization, defined.
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- 48-221. Medical examination; cost to applicant as condition of employment; unlawful; cost to employer.
- 48-222. Medical examination as condition of employment; violation; penalty.
- 48-223. Medical examination as condition of employment; exemptions from sections.
- 48-224. Withholding of wages; when authorized.
- 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.
- 48-228. Repealed. Laws 1997, LB 5, § 5.
- 48-229. Veterans preference; Commissioner of Labor; duties.
- 48-230. Veterans preference; violations; penalty.
- 48-231. Veterans preference; county attorney; duties.
- 48-232. Anabolic steroids; terms, defined.
- 48-233. Anabolic steroids; employees; prohibited acts; sanction.
- 48-234. Adoptive parent; leave of absence authorized; enforcement; attorney's fees.
- 48-235. Law enforcement officers; ticket quota requirements; prohibited.
- 48-236. Genetic testing; restrictions.
- 48-237. Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

Section

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 website, in collaboration with the Department of Labor, with a job-search tool specific to veterans. Such website 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 website, but no later than June 30, 2024; and
 - (b) Research best practices and websites specific to veterans from other states.

Source: Laws 2019, LB138, § 1.

48-204 Repealed. Laws 1969, c. 398, § 1.

48-205 Repealed. Laws 1969, c. 398, § 1.

48-206 Repealed. Laws 1969, c. 398, § 1.

48-207 Repealed. Laws 1969, c. 398, § 1.

48-208 Repealed. Laws 1969, c. 398, § 1.

48-209 Repealed. Laws 2020, LB1016, § 12.

48-210 Repealed. Laws 2020, LB1016, § 12.

48-211 Repealed. Laws 2020, LB1016, § 12.**48-212 Lunch hour; requirements; applicability.**

Any person, firm, or corporation owning or operating an assembling plant, workshop, or mechanical establishment employing one or more persons shall allow all of their employees not less than thirty consecutive minutes for lunch in each eight-hour shift, and during such time it shall be unlawful for any such employer to require such employee or employees to remain in buildings or on the premises where their labor is performed. This section does not apply to employment that is covered by a valid collective-bargaining agreement or other written agreement between an employer and employee.

Source: Laws 1931, c. 96, § 1, p. 265; C.S.Supp.,1941, § 48-215; R.S. 1943, § 48-212; Laws 1955, c. 188, § 1, p. 536; Laws 2004, LB 382, § 1.

48-213 Lunch hour; violation; penalty.

Any person, firm or corporation violating any of the provisions of section 48-212 shall be guilty of a Class III misdemeanor.

Source: Laws 1931, c. 96, § 2, p. 266; C.S.Supp.,1941, § 48-216; R.S. 1943, § 48-213; Laws 1977, LB 40, § 275.

48-214 Collective bargaining; race or color discrimination prohibited.

It is hereby declared to be the policy of this state that no representative agency of labor, in collective bargaining with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of work, shall, in such collective bargaining, discriminate against any person because of his race or color. The Department of Labor shall be and hereby is charged with the duty of enforcement of this policy in conformity with Article I of the Constitution of Nebraska and section 1 of the Fourteenth Amendment to the Constitution of the United States of America.

Source: Laws 1941, c. 96, § 1, p. 406; C.S.Supp.,1941, § 48-801; R.S. 1943, § 48-214.

Cross References

Actions of employees in collective bargaining with employers, designation of plaintiff, process, and execution of judgment, see sections 25-313 and 25-530.08.

Civil rights, see Chapter 20.

Enforcement of policy of collective bargaining in labor disputes was a matter of statewide and not local concern. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

48-215 Military supplies; production; distribution; discrimination prohibited.

It shall be unlawful for any person, firm or corporation, engaged to any extent whatsoever in the State of Nebraska in the production, manufacture or distribution of military or naval material, equipment or supplies for the State of Nebraska or the government of the United States, to refuse to employ any person in any capacity, if said person is a citizen and is qualified, on account of the race, color, creed, religion or national origin of said person.

Source: Laws 1943, c. 114, § 1, p. 400; R.S.1943, § 48-215.

This section prohibits racial discrimination by persons producing or distributing military or naval supplies. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

48-216 Military supplies; discrimination; violation; penalty.

Any person, firm or corporation, violating any of the provisions of section 48-215, shall be guilty of a Class III misdemeanor. Each violation of section 48-215 shall be a separate offense.

Source: Laws 1943, c. 114, § 2, p. 400; R.S.1943, § 48-216; Laws 1977, LB 40, § 276.

48-217 Labor organizations; membership or nonmembership; prohibited acts.

To make operative the provisions of sections 13, 14 and 15 of Article XV of the Constitution of Nebraska, no person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join, affiliate with, or pay a fee either directly or indirectly to a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or nonmembership in a labor organization.

Source: Laws 1947, c. 177, § 1, p. 585; Laws 1961, c. 236, § 1, p. 699.

Right to work was a right guaranteed by both state and federal Constitutions. *Hanson v. Union Pacific R.R. Co.*, 160 Neb. 669, 71 N.W.2d 526 (1955).

Provisions of federal Railway Labor Act superseded and were controlling over requirements of this section. *Railway Employ-*

ees Department, American Federation of Labor v. Hanson, 351 U.S. 225 (1956).

Public policy that employment not be denied on basis of union membership includes public as well as private employment. *American Federation of State, Co., & Mun. Emp. v. Woodward*, 406 F.2d 137 (8th Cir. 1969).

48-218 Labor organization, defined.

The term labor organization means any organization of any kind, or any agency or employee representation committee or plan, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Source: Laws 1947, c. 177, § 2, p. 585.

48-219 Labor organization; violation; penalty.

Any individual, corporation or association that enters into a contract after September 7, 1947, in violation of the provisions of section 48-217, shall be guilty of a Class IV misdemeanor.

Source: Laws 1947, c. 177, § 3, p. 585; Laws 1977, LB 40, § 277.

48-220 Medical examinations; employer, defined.

As used in sections 48-220 to 48-223, unless the context otherwise requires, employer shall mean and include an individual, a partnership, a limited liability company, an association, a corporation, a legal representative, a trustee, a receiver, a trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

Source: Laws 1963, c. 280, § 1, p. 837; Laws 1993, LB 121, § 286.

48-221 Medical examination; cost to applicant as condition of employment; unlawful; cost to employer.

It shall be unlawful for any employer, as defined in section 48-220, to require any applicant for employment, to pay the cost of a medical examination

required by the employer as a condition of employment. When the employer requests an applicant for a position to submit to a medical examination, the employer shall assume the cost thereof.

Source: Laws 1963, c. 280, § 2, p. 837.

48-222 Medical examination as condition of employment; violation; penalty.

Any employer who violates the provisions of section 48-221 shall be guilty of a Class V misdemeanor. Each violation shall constitute a separate offense. It shall be the duty of the Commissioner of Labor to enforce the provisions of sections 48-220 to 48-223.

Source: Laws 1963, c. 280, § 3, p. 837; Laws 1977, LB 40, § 278.

48-223 Medical examination as condition of employment; exemptions from sections.

The provisions of sections 48-220 to 48-223 shall not apply to any employment relationship entered into by the state or any subdivision of the state when a physical examination is required by law as a condition of employment.

Source: Laws 1963, c. 280, § 4, p. 838.

48-224 Withholding of wages; when authorized.

(1) Any employee of the State of Nebraska, any municipal corporation, or any public body or agency created by the laws of this state, who desires to participate voluntarily in any employee organization, credit union, or any community charity or public welfare plan approved by the Governor and the Director of Administrative Services, in the case of employees of the State of Nebraska, or by the duly elected governing body of such municipal corporation or other public body or agency, may execute an order authorizing the withholding from any wages or salary paid to such employee of a sum each month or pay period and the same to be paid to the designated recipient thereof. For purposes of this section, community charity includes any not-for-profit federation of health and human services agencies and associations.

(2) If a not-for-profit federation of health and human services agencies and associations is authorized pursuant to subsection (1) of this section, approval to similar not-for-profit federations shall also be granted on a similar equitable basis. For purposes of this subsection, a similar not-for-profit federation shall meet the following requirements:

(a) The federation has had an established office in the state for at least the last five years;

(b) The federation represents at least ten Nebraska-based health and human services agencies and associations in addition to the federation;

(c) The federation is a Nebraska corporation in good standing which holds a valid 501(c)(3) designation by the Internal Revenue Code;

(d) The federation and its agencies have an active, voluntary board which exercises administrative control over the federation and holds regular meetings; and

(e) The federation has a program focus and service delivery which is organized on either a statewide or regional basis.

Source: Laws 1967, c. 571, § 1, p. 1878; Laws 1997, LB 622, § 76.

A political subdivision is not compelled to check off dues for a union because it has certified the union and agreed to bargain with it. *State ex rel. Council #32 v. City of Hastings*, 214 Neb. 20, 332 N.W.2d 661 (1983).

Cited as indicating public policy allowing public employees to join labor union. *American Federation of State, Co., & Mun. Emp. v. Woodward*, 406 F.2d 137 (8th Cir. 1969).

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.

48-228 Repealed. Laws 1997, LB 5, § 5.

48-229 Veterans preference; Commissioner of Labor; duties.

It shall be the duty of the Commissioner of Labor to enforce the provisions of sections 48-225 to 48-231. The commissioner shall act on preference claims as follows:

(1) When the employing agency and the claimant are in disagreement or when there is doubt as to any preference claim, the commissioner shall adjudicate the claim based on information given in the claim, the documents supporting the claim, and information which may be received from the armed forces of the United States, the United States Department of Veterans Affairs, or the National Archives and Records Administration;

(2) The commissioner shall allow a tentative five-percent preference, pending receipt of additional information, to any person who claims either a five-percent or a ten-percent preference but who furnishes insufficient information to establish entitlement thereto at the time of examination; and

(3) The commissioner shall decide appeals from preference determinations made by any employing agency.

Source: Laws 1969, c. 751, § 5, p. 2827; Laws 1991, LB 2, § 7; Laws 2005, LB 54, § 9.

48-230 Veterans preference; violations; penalty.

Any person who violates sections 48-225 to 48-231 shall be guilty of a Class IV misdemeanor. Such person shall be prohibited from receiving any compensation from public funds until he or she complies with sections 48-225 to 48-231.

Source: Laws 1969, c. 751, § 6, p. 2827; Laws 1977, LB 40, § 279; Laws 2002, LB 722, § 1.

48-231 Veterans preference; county attorney; duties.

The county attorneys, in their respective counties, shall prosecute, before any court of appropriate jurisdiction, all persons charged with violating sections 48-225 to 48-231.

Source: Laws 1969, c. 751, § 7, p. 2827; Laws 2002, LB 722, § 2.

48-232 Anabolic steroids; terms, defined.

For purposes of section 48-233:

- (1) Anabolic steroid shall have the definition found in section 28-401;
- (2) Employee shall mean any person, paid or unpaid, who in any way assists an entity in carrying out the business activities of such entity. Employee shall include an independent contractor;
- (3) Institution shall mean any public elementary, secondary, or postsecondary educational institution;
- (4) Political subdivision shall have the definition found in section 13-903;
- (5) State agency shall have the definition of agency as found in section 81-1705; and
- (6) Subordinate employee shall mean a person employed by the same employer as and directly or indirectly supervised in the course of such employment by an employee.

Source: Laws 1990, LB 571, § 8; Laws 1992, LB 1019, § 35.

48-233 Anabolic steroids; employees; prohibited acts; sanction.

(1) In addition to the penalties provided in the Uniform Controlled Substances Act, any employee of a state agency, political subdivision, or institution who possesses, dispenses, delivers, administers, uses, or knowingly allows a subordinate employee or a student attending such employee's employing institution to possess, dispense, deliver, administer, or use an anabolic steroid unless such substance is needed for a valid medical purpose:

(a) For the first conviction, shall be dismissed from employment and shall not be an employee of the dismissing entity or any other state agency, political subdivision, or institution for a period of one year after his or her dismissal; and

(b) For a second or any subsequent conviction, shall be dismissed from employment and shall not thereafter be an employee of the dismissing entity or any other state agency, political subdivision, or institution.

(2) Any sanction imposed pursuant to this section shall be subject to the Administrative Procedure Act except for those employees governed by sections 79-824 to 79-842.

(3) The use of an anabolic steroid for the purpose of hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving physical appearance or performance in any form of exercise, sport, or game shall not be a valid medical purpose or in the course of professional practice.

Source: Laws 1990, LB 571, § 9; Laws 1992, LB 1019, § 36; Laws 1996, LB 900, § 1053.

Cross References

Administrative Procedure Act, see section 84-920.

Uniform Controlled Substances Act, see section 28-401.01.

48-234 Adoptive parent; leave of absence authorized; enforcement; attorney's fees.

(1) Except as provided in subsection (2) of this section, whenever an employer, including a governmental agency, permits an employee to take a leave of absence upon the birth of the employee's child, an adoptive parent, following the commencement of the parent-child relationship, is entitled to the same leave upon the same terms.

(2) The adoptive parent leave of absence is not required if the child being adopted is a special needs child over eighteen years of age, a child who is over eight years of age and is not a special needs child, a stepchild being adopted by his or her stepparent, a foster child being adopted by his or her foster parent, or a child who was originally under a voluntary placement for purposes other than adoption without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child by the person with whom the voluntary placement was made.

(3) For purposes of this section, commencement of the parent-child relationship means when the child is placed with the employee for the purposes of adoption.

(4) Whenever an employer, including a governmental agency, refuses to extend a child-care leave of absence to an adoptive parent in violation of this section, an aggrieved adoptive parent may bring an action for equitable relief and damages. In all actions brought pursuant to this section, reasonable attorney's fees, as determined by the court, shall be awarded to the prevailing party if the prevailing party is the adoptive parent.

Source: Laws 1999, LB 134, § 1.

48-235 Law enforcement officers; ticket quota requirements; prohibited.

A state agency or political subdivision shall not directly require a law enforcement officer employed by the state agency or political subdivision to issue a certain number or percentage of traffic citations, police citations, memoranda of traffic violations, memoranda of faulty equipment, or any other type of citation on any periodic basis. The purpose of this section is to prohibit all types of ticket quota requirements for law enforcement officers. For purposes of this section, law enforcement officer includes peace officers as defined in section 49-801 and conservation officers of the Game and Parks Commission.

Source: Laws 2000, LB 204, § 1.

48-236 Genetic testing; restrictions.

(1) For purposes of this section:

(a) Employee does not include an individual employed in the domestic service of any person;

(b) Employer means a person who has one or more employees;

(c) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test; and

(d) Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis, of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

(2) Except as otherwise required by federal law, an employer shall not:

(a) Fail or refuse to hire, recruit, or promote an employee or applicant for employment because of genetic information that is unrelated to the ability to perform the duties of a particular job or position;

(b) Discharge or otherwise discriminate against an employee or applicant with respect to compensation or the terms, conditions, or privileges of employment because of genetic information that is unrelated to the ability to perform the duties of a particular job or position;

(c) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an employee or applicant of employment opportunities or otherwise adversely affects the status of an employee or applicant because of genetic information that is unrelated to the ability to perform the duties of a particular job or position; or

(d) Require an employee or applicant for employment to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

(3) Subsection (2) of this section does not prohibit an employee from voluntarily providing to an employer genetic information that is related to the employee's health or safety in the workspace. Subsection (2) of this section does not prohibit an employer from using genetic information received from an employee under this subsection to protect the employee's health or safety.

(4) This section shall not apply to the employment of an individual by his or her parent, spouse, or child.

Source: Laws 2001, LB 432, § 3.

48-237 Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

(1) For purposes of this section:

(a) Employer means a person which employs any individual within this state as an employee;

(b) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods 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 (i) 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, (ii) 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 (iii) 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;

(c) Person 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;

(d) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm; and

(e) 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.

(2) Except as otherwise provided in subsection (3) of this section, an employer shall not:

(a) Publicly post or publicly display in any manner more than the last four digits of an employee's social security number, including intentional communication of more than the last four digits of the social security number or otherwise making more than the last four digits of the social security number available to the general public or to an employee's coworkers;

(b) Require an employee to transmit more than the last four digits of his or her social security number over the Internet unless the connection is secure or the information is encrypted;

(c) Require an employee to use more than the last four digits of his or her social security number to access an Internet website unless a password, unique personal identification number, or other authentication device is also required to access the Internet website; or

(d) Require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, an employer shall be permitted to use more than the last four digits of an employee's social security number only for:

(i) Compliance with state or federal laws, rules, or regulations;

(ii) Internal administrative purposes, including provision of more than the last four digits of social security numbers to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing; and

(iii) Commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services.

(b) The following uses for internal administrative purposes described in subdivision (a)(ii) of this subsection shall not be permitted:

- (i) As an identification number for occupational licensing;
 - (ii) As an identification number for drug-testing purposes except when required by state or federal law;
 - (iii) As an identification number for company meetings;
 - (iv) In files with unrestricted access within the company;
 - (v) In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or
 - (vi) For posting any type of company information.
- (4) An employer who violates this section is guilty of a Class V misdemeanor.
- (5) Evidence of a conviction under this section is admissible in evidence at a civil trial as evidence of the employer's negligence.

Source: Laws 2007, LB674, § 16.

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**

Cross References

Constitutional provisions:

Child employment:

Minimum wage, see Article XV, section 8, Constitution of Nebraska.

Regulation of, see Article XV, section 8, Constitution of Nebraska.

Section

- 48-301. Terms, defined.
- 48-302. Children under sixteen; employment certificate required; enforcement of section.
- 48-302.01. Children; golf caddy; exempt from provisions of section.
- 48-302.02. Parent or person standing in loco parentis; exemption.
- 48-302.03. Detasseling; employment; conditions; exemption.
- 48-302.04. Detasseling; employer; requirements.
- 48-303. Employment certificate; approval by school officer; report; investigation.
- 48-304. Employment certificate; issuance; conditions.
- 48-305. Employment certificate; contents.
- 48-306. School record; contents.
- 48-307. Employment certificate; filing with Department of Labor.
- 48-308. Employment certificate; evening school; attendance record.
- 48-309. Age and schooling certificate; Department of Labor to prescribe form.
- 48-310. Children under sixteen; working hours; limit; posting of notice; fee; special permit; exceptions.
- 48-310.01. Performing arts; special permit; fee.
- 48-310.02. Special permits; fees; limitation.
- 48-311. Violations; penalties.
- 48-312. Unlawful employment; evidence; visitation; reports.
- 48-313. Children under sixteen; dangerous, unhealthy, or immoral employment.

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.

48-302 Children under sixteen; employment certificate required; enforcement of section.

No child under sixteen years of age shall be employed or permitted or suffered to work in any employment as defined in section 48-301 within this state unless the person or corporation employing the child procures and keeps on file, accessible to the attendance officers and to the Department of Labor and its assistants and employees, an employment certificate as prescribed in section 48-304 and keeps two complete lists of all such children employed in the building, one on file and one conspicuously posted near the principal entrance of the building in which such children are employed. Upon the termination of the employment of a child so registered whose certificate is so filed, such certificate shall be transmitted by the employer to the person authorizing the certificate pursuant to section 48-303 and shall be turned over to the child named upon demand. Any attendance officer or the Department of Labor or its assistants and employees may demand that any employer in whose place of business a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, either furnish within ten days satisfactory evidence that such child is in fact over sixteen years of age or cease to employ or permit or suffer such child to work in such place of business. The same evidence of the age of such child may be required from such employer as is required on the issuance of an employment certificate as provided in section 48-304, and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer fails to produce and deliver to the attendance officer or the Commissioner of Labor within ten days after demand such evidence of the age of any child as may be required under the provisions of section 48-304 and continues to employ such child or permit or suffer such child to work in such place of business, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this section that such child is under sixteen years of age and is unlawfully employed.

Source: Laws 1907, c. 66, § 2, p. 259; R.S.1913, § 3576; Laws 1919, c. 190, tit. IV, art. III, § 2, p. 550; C.S.1922, § 7670; C.S.1929, § 48-302; R.S.1943, § 48-302; Laws 1963, c. 290, § 2, p. 868; Laws 1967, c. 296, § 1, p. 804; Laws 1995, LB 330, § 2; Laws 1999, LB 272, § 18.

Employer's failure to procure certificate is not proximate cause of injury; and is material only to sustain minor's right of action. *Benner v. Evans Laundry Co.*, 117 Neb. 701, 222 N.W. 630 (1929).

Main purpose of requiring certificate is educational. *Benner v. Evans Laundry Co.*, 117 Neb. 701, 222 N.W. 630 (1929); *Rookstool v. Cudahy Packing Co.*, 100 Neb. 851, 161 N.W. 583 (1917).

This section has no application where pleadings and trial of case were on theory of common-law liability of employer. *Rookstool v. Cudahy Packing Co.*, 100 Neb. 851, 161 N.W. 583 (1917).

If unlawful employment is cause of injury, master is liable. *Hankins v. Reimers*, 86 Neb. 307, 125 N.W. 516 (1910).

48-302.01 Children; golf caddy; exempt from provisions of section.

Section 48-302 shall not be construed to apply to the employment of any child solely as a caddy on any golf course or place where golf is played.

Source: Laws 1961, c. 237, § 1, p. 700; Laws 1987, LB 35, § 1.

48-302.02 Parent or person standing in loco parentis; exemption.

Section 48-302 shall not apply to a parent or a person standing in loco parentis who employs and directly supervises his or her own child or a child in his or her custody in a business owned and operated by such parent or person standing in loco parentis. This section shall not exempt such an employer from the restrictions on hours of work, work, or place of performance described in sections 48-310 and 48-313.

Source: Laws 1993, LB 162, § 1.

48-302.03 Detasseling; employment; conditions; exemption.

- (1) A child under the age of twelve shall not be employed in detasseling.
- (2) A child who is at least twelve years but less than sixteen years of age may be employed in detasseling if:
 - (a) The employment is outside of school hours during the month of June, July, or August;
 - (b) The employer of such child obtains the written consent of a parent of the child or a person standing in loco parentis to the child for the child to be so employed;
 - (c) The child is domiciled within seventy-five miles of the location where the labor is to be performed; and
 - (d) The child does not work more than forty-eight hours in any one week, nor more than nine hours in any one day, nor before the hour of 6 in the morning, nor after the hour of 8 in the evening if the child is under the age of fourteen, nor after the hour of 10 in the evening if the child is between the ages of fourteen and sixteen. Transportation time shall not be counted under this subdivision nor shall time spent during work breaks or waiting time spent during storm events if no work is required during those periods.
- (3) Sections 48-302 and 48-310 do not apply to employment of a child in detasseling if the requirements of subsection (2) of this section are met.
- (4) This section does not apply to a parent or a person standing in loco parentis who employs and directly supervises his or her own child or a child in his or her custody in a business owned and operated by such parent or person standing in loco parentis.

Source: Laws 2001, LB 180, § 1.

48-302.04 Detasseling; employer; requirements.

- (1) An employer who employs a child under sixteen years of age in detasseling shall provide at least two supervisors who are eighteen years of age or older at each location where detasseling is being performed by a child under sixteen years of age. The supervisors shall be capable of assisting with issues of health, safety, and wages, including bonuses and incentive payments.
- (2) An employer who employs a child under sixteen years of age in detasseling shall provide the parents of such child with an information sheet defining the terms of employment, including, but not limited to, the availability of water and sanitary facilities on the job and wage, bonus, and incentive payment information. The information sheet shall set forth the name, address, and telephone number of the Division of Safety and Labor Standards of the

Department of Labor for purposes of filing complaints concerning nonpayment of wages.

Source: Laws 2001, LB 180, § 2.

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.

48-304 Employment certificate; issuance; conditions.

The person authorized to issue an employment certificate under section 48-303 shall not issue such certificate until he or she has received, examined, approved, and filed the following papers duly executed: (1) The school record of the child, properly filled out and signed as provided in section 48-306, showing the child has completed the work of the sixth grade of the public schools, or its equivalent, or is regularly attending night school in compliance with section 48-308; and (2) a passport or duly attested transcript of the certificate of birth or baptism or other religious or official record showing the date and place of birth of such child. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births, shall be conclusive evidence of the age of such child. The affidavit of the parent, guardian, or custodian of a child shall be required only in case none of such documents can be produced and filed,

showing the place and date of birth of such child, which affidavit must be taken before the officer issuing the employment certificate. Such employment certificate shall not be issued until such child has personally appeared before and been examined by the officer issuing the certificate and until such officer, after making such examination, signs and files in his or her office a statement that the child can read and legibly write simple sentences in the English language and that, in his or her opinion, the child has reached the normal development of a child of such child's age, and the child is in sound health and is physically able to perform the work which such child intends to do. In doubtful cases such physical fitness shall be determined by a physician provided by the Department of Labor. In addition to the requirements of this section, if the child is under fourteen years of age, the employment certificate shall be issued only for employment in connection with an employment program supervised and sponsored by the school or school district such child attends. Whenever the person authorized to issue the employment certificate is in doubt about the age of a child, he or she may require the party or parties making application for the certificate to appear before the judge of the juvenile court or the county judge where the question of the age of the child shall be determined and the judgment of the court shall be final and binding upon the person issuing the certificate. Notice of the hearing before the court shall be given to some one of the persons authorized to demand inspection of employment certificates. Every employment certificate shall be signed in the presence of the officer issuing the certificate by the child in whose name it is issued.

Source: Laws 1907, c. 66, § 4, p. 260; R.S.1913, § 3578; Laws 1919, c. 190, tit. IV, art. III, § 4, p. 551; C.S.1922, § 7672; C.S.1929, § 48-304; R.S.1943, § 48-304; Laws 1967, c. 296, § 3, p. 806; Laws 1999, LB 813, § 3.

48-305 Employment certificate; contents.

Such certificate shall state the date and place of birth of such child and describe the color of the hair and eyes, the height and weight and any distinguishing facial marks of such child, and that the papers required by section 48-304 have been duly examined, approved and filed, and that the child named in such certificate has appeared before the officer signing the certificate and been examined.

Source: Laws 1907, c. 66, § 5, p. 262; R.S.1913, § 3579; Laws 1919, c. 190, tit. IV, art. III, § 5, p. 552; C.S.1922, § 7673; C.S.1929, § 48-305; R.S.1943, § 48-305.

48-306 School record; contents.

The school record shall be signed by the teacher and principal of the school which such child has attended and shall be furnished on demand to a child entitled thereto. It shall contain a statement certifying that the child has regularly attended the public schools, or schools equivalent thereto or parochial schools for not less than three-fourths of the school year prior to applying for such school record, and is able to read and write simple sentences in the English language. It shall also state the amount of work completed by such child, measured by the grade of the public day schools in the city or county.

Such school record shall also give the age and residence of the child as shown on the records of the school, and the name of its parent, guardian or custodian.

Source: Laws 1907, c. 66, § 6, p. 262; R.S.1913, § 3580; Laws 1919, c. 190, tit. IV, art. III, § 6, p. 553; C.S.1922, § 7674; C.S.1929, § 48-306; R.S.1943, § 48-306; Laws 1967, c. 296, § 4, p. 807.

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.

48-308 Employment certificate; evening school; attendance record.

Regular attendance of a child at any public evening school, maintained in any city or village when instruction is given not less than twenty weeks each year, three evenings each week, and two hours each evening, shall authorize the issuance of a certificate of employment when the schooling certificate fails to show that the child has completed the work of the sixth grade if the schooling certificate and all other certificates are otherwise in due form and the applicant further produces a certificate from the superintendent or principal of such public evening school showing the regular attendance of such child at such evening school and if the child employed under such certificate furnishes to his or her employer a weekly certificate showing regular attendance each week while the evening school is in session.

Source: Laws 1907, c. 66, § 8, p. 262; R.S.1913, § 3582; Laws 1919, c. 190, tit. IV, art. III, § 8, p. 553; C.S.1922, § 7676; C.S.1929, § 48-308; R.S.1943, § 48-308; Laws 1967, c. 296, § 5, p. 807; Laws 1987, LB 35, § 4.

48-309 Age and schooling certificate; Department of Labor to prescribe form.

The age and schooling certificate provided for herein shall be made out upon blank forms prescribed and furnished in triplicate by the Department of Labor.

Source: Laws 1907, c. 66, § 9, p. 263; R.S.1913, § 3583; Laws 1919, c. 190, tit. IV, art. III, § 9, p. 554; C.S.1922, § 7677; C.S.1929, § 48-309; R.S.1943, § 48-309; Laws 1945, c. 116, § 1, p. 389.

48-310 Children under sixteen; working hours; limit; posting of notice; fee; special permit; exceptions.

(1) No person under sixteen years of age shall be employed or permitted to work in any employment as defined in section 48-301 more than forty-eight hours in any one week, nor more than eight hours in any one day, nor before

the hour of 6 in the morning, nor after the hour of 8 in the evening if the child is under the age of fourteen, nor after the hour of 10 in the evening if such child is between the ages of fourteen and sixteen. The person issuing the work certificate may limit or extend the stated hour in individual cases by endorsement on the certificate, except a child shall only be permitted to work after the hour of 10 p.m. if there is no school scheduled for the following day and, if he or she is between fourteen and sixteen years of age, he or she has consented to such extension by signing his or her name on the endorsement extension, and his or her employer has obtained a special permit from the Department of Labor. The Department of Labor may issue a special permit to allow employment of such child beyond 10 p.m. upon being satisfied, after inspection of the working conditions, of the safety, healthfulness, and general welfare to the child of the business premises. The special permit may be issued for periods not to exceed ninety days and may be renewed only after reinspection. The fee for each permit or renewal shall be established by rule and regulation of the Commissioner of Labor, and all money so collected by the commissioner shall be remitted to the State Treasurer who shall credit the funds to the General Fund. Every employer shall post in a conspicuous place in every room where such children are employed a printed notice stating the hours required of them each day, the hours of commencing and stopping work, and the time allowed for meals. The printed form of such notice shall be furnished by the Department of Labor.

(2) Except as provided in subsections (3) and (4) of this section, no person under sixteen years of age shall be employed or permitted to work as a door-to-door solicitor.

(3) A person under sixteen years of age engaged in the delivery or distribution of newspapers or shopping news may be employed or permitted to work as a door-to-door solicitor of existing customers of such newspapers or shopping news.

(4) A person under sixteen years of age is permitted to work as a door-to-door solicitor if he or she is working on behalf of his or her own individual entrepreneurial endeavor.

Source: Laws 1907, c. 66, § 10, p. 266; R.S.1913, § 3584; Laws 1919, c. 190, tit. IV, art. III, § 10, p. 556; C.S.1922, § 7678; C.S.1929, § 48-310; R.S.1943, § 48-310; Laws 1963, c. 290, § 3, p. 869; Laws 1967, c. 296, § 6, p. 808; Laws 1969, c. 399, § 1, p. 1389; Laws 1995, LB 330, § 3; Laws 2005, LB 484, § 1.

48-310.01 Performing arts; special permit; fee.

When the Department of Labor finds it to be in the best interests of the child, the Department of Labor may issue a special permit waiving any requirement or restriction imposed on employment of a child pursuant to sections 48-302 to 48-313 for any child employed as a performer in the performing arts subject to such conditions as the Department of Labor deems necessary. For purposes of this section, performing arts means musical and theatrical presentations and productions, including motion picture, theatre, radio, and television productions. Before any such waiver is issued, the written consent of a parent or a person standing in loco parentis to the child is required. The Department of

Labor may charge a fee established by rule and regulation of the Commissioner of Labor for each special permit issued pursuant to this section.

Source: Laws 1995, LB 330, § 4.

48-310.02 Special permits; fees; limitation.

The fees established by the Commissioner of Labor pursuant to sections 48-310 and 48-310.01 shall be established with due regard for the costs of administering sections 48-310 and 48-310.01. The fees shall not exceed the amount necessary to meet the costs of administering sections 48-310 and 48-310.01.

Source: Laws 1996, LB 1047, § 1.

48-311 Violations; penalties.

Whoever employs a child under sixteen years of age and whoever, having under his or her control a child under such age, causes or permits such child to be employed in violation of sections 48-302 to 48-313 is guilty of a Class II misdemeanor. Whoever continues to employ any child in violation of any of such sections, after being notified by an attendance officer or by the Department of Labor or by its assistants or employees, is, for every day thereafter that such employment continues, guilty of a Class II misdemeanor.

The failure of an employer of child labor to produce, upon request of a person authorized to demand the same, any employment certificate or list required by such sections shall be prima facie evidence of the illegal employment of any child whose employment certificate is not produced or whose name is not listed. Any corporation or employer retaining employment certificates in violation of such sections is guilty of a Class II misdemeanor.

Every person authorized or required to sign any certificate or statement prescribed by such sections who knowingly certifies or makes oath to any material false statement therein or who violates any of the provisions of such sections is guilty of a Class II misdemeanor.

Every person who refuses admittance to any person authorized to visit or inspect any premises or place of business under the provisions of such sections and to produce all certificates and lists he or she may have when demanded, after such person shall have announced his or her name and the office he or she holds and the purpose of his or her visit, or otherwise obstructs such persons in the performance of their duties prescribed by such sections is guilty of a Class II misdemeanor.

Source: Laws 1907, c. 66, § 11, p. 266; R.S.1913, § 3585; Laws 1919, c. 190, tit. IV, art. III, § 11, p. 556; C.S.1922, § 7679; C.S.1929, § 48-311; R.S.1943, § 48-311; Laws 1967, c. 296, § 7, p. 808; Laws 1977, LB 40, § 280; Laws 1987, LB 35, § 5; Laws 1995, LB 330, § 5; Laws 2001, LB 180, § 5.

48-312 Unlawful employment; evidence; visitation; reports.

The presence of a child under sixteen years of age, apparently at work, in a place of employment as defined in section 48-301 is prima facie evidence of his or her employment there. Attendance officers shall visit the places of employment to ascertain whether any children are employed contrary to the provisions

of sections 48-302 to 48-313, and the attendance officers shall report any cases of illegal employment to the Department of Labor and to the county attorney.

Source: Laws 1919, c. 190, tit. IV, art. III, § 12, p. 557; C.S.1922, § 7680; C.S.1929, § 48-312; R.S.1943, § 48-312; Laws 1967, c. 296, § 8, p. 809; Laws 1995, LB 330, § 6.

48-313 Children under sixteen; dangerous, unhealthy, or immoral employment.

No child under the age of sixteen years shall be employed in any work which by reason of the nature of the work or place of performance is dangerous to life or limb or in which his or her health may be injured or his or her morals may be depraved. No parent, guardian, or other person, who has under his or her control any child, shall cause or permit such child to work or be employed in violation of this section.

Source: Laws 1907, c. 66, § 13, p. 268; R.S.1913, § 3587; Laws 1919, c. 190, tit. IV, art. III, § 13, p. 558; C.S.1922, § 7681; C.S.1929, § 48-313; R.S.1943, § 48-313; Laws 1977, LB 40, § 281; Laws 1987, LB 35, § 6.

ARTICLE 4

HEALTH AND SAFETY REGULATIONS

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48-418.02.	Repealed. Laws 2007, LB 265, § 38.
48-418.03.	Repealed. Laws 2007, LB 265, § 38.
48-418.04.	Repealed. Laws 2007, LB 265, § 38.
48-418.05.	Repealed. Laws 2007, LB 265, § 38.
48-418.06.	Repealed. Laws 2007, LB 265, § 38.
48-418.07.	Repealed. Laws 2007, LB 265, § 38.
48-418.08.	Repealed. Laws 2007, LB 265, § 38.
48-418.09.	Repealed. Laws 2007, LB 265, § 38.
48-418.10.	Repealed. Laws 2007, LB 265, § 38.
48-418.11.	Repealed. Laws 2007, LB 265, § 38.
48-418.12.	Repealed. Laws 2007, LB 265, § 38.
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48-448.	Repealed. Laws 1999, LB 2, § 3.
48-449.	Repealed. Laws 1999, LB 2, § 3.

48-401 Water closets; duty of employer to provide.

Every factory, mill, workshop, mercantile or mechanical establishment or other building, where one or more persons are employed, shall be provided within reasonable access, with a sufficient number of water closets, earth closets or privies for the reasonable use of the persons employed therein, and wherever male and female persons are employed as aforesaid together, water closets, earth closets or privies separate and apart, shall be provided for the use of each sex, and plainly so designated, and no person shall be allowed to use such closet or privy assigned to the other sex. Such closet shall be properly enclosed and ventilated and at all times kept in a clean and sanitary condition. When the number employed is more than twenty of either sex, there shall be provided an additional closet for each sex up to the number of forty and above that number in the same ratio. The Department of Labor or any person authorized by the department may require such changes in the placing of such closets as the department may deem necessary and may require other changes which may serve the best interest of morals and sanitation.

Source: Laws 1911, c. 67, § 1, p. 299; Laws 1913, c. 103, § 1, p. 258; R.S.1913, § 3588; Laws 1919, c. 190, tit. IV, art. IV, § 1, p. 558; C.S.1922, § 7682; C.S.1929, § 48-401; R.S.1943, § 48-401.

The state, by its Legislature, has extensively entered the field of labor. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

Safety regulations do not apply to nonoperating owner of building. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

Petition of employee was insufficient to state cause of action under this section where it merely showed contracting of unusual disease by employee. *Russo v. Swift & Co.*, 136 Neb. 406, 286 N.W. 291 (1939).

48-402 Dressing rooms; duty to provide; rights of lessee.

In factories, mills, workshops, mercantile or mechanical establishments, or other places where the labor performed by the operator is of such a character that it becomes necessary to change the clothing, wholly or in part, before leaving the building at the close of the day's work, separate dressing rooms shall be provided for females whenever so required by the Department of Labor. It shall be the duty of every occupant, whether owner or lessee of any such premises used as specified by sections 48-401 to 48-424, to make all the changes and additions thereto. In case such changes are made upon the order of the department to the lessee of the premises, the lessee may at any time within thirty days after the completion thereof, bring an action against any person, corporation, partnership, or limited liability company having an interest in such premises and may recover such proportion of expenses of making such changes and additions as the court adjudges should justly and equitably be borne by such defendant.

Source: Laws 1911, c. 67, § 2, p. 300; Laws 1913, c. 103, § 1, p. 258; R.S.1913, § 3589; Laws 1919, c. 190, tit. IV, art. IV, § 2, p. 558; C.S.1922, § 7683; C.S.1929, § 48-402; R.S.1943, § 48-402; Laws 1993, LB 121, § 287.

Lessee is given a cause of action against parties having interest in premises for share of cost of changes and additions. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-403 Ventilation; dust and fumes; fans required.

If in any of the aforesaid places any process is carried on by which dust or fumes are caused, which may be inhaled by the persons employed therein, or if the air shall become exhausted or impure, there shall be provided a fan or other such mechanical device as will substantially carry away all such dust or fumes or other impurities, subject to the approval of the Department of Labor.

Source: Laws 1911, c. 67, § 3, p. 300; Laws 1913, c. 103, § 1, p. 259; R.S.1913, § 3590; Laws 1919, c. 190, tit. IV, art. IV, § 3, p. 559; C.S.1922, § 7684; C.S.1929, § 48-403; R.S.1943, § 48-403.

The "aforesaid places" referred to in this section are those which are mentioned in sections 48-401 and 48-402: factories, mills, workshops, mercantile or mechanical establishments, or other buildings where one or more persons are employed. *Anderson v. Nashua Corp.*, 246 Neb. 420, 519 N.W.2d 275 (1994).

Burden is on employee to prove that injury resulted proximately from failure of employer to install a fan to carry off fumes of paint shop. *Smith v. Morton Motor Co.*, 145 Neb. 396, 16 N.W.2d 843 (1944).

Fact that employee contracted disease of echinococcosis does not show violation of this section. *Russo v. Swift & Co.*, 136 Neb. 406, 286 N.W. 291 (1939).

Where employer provides foundry with ample ventilation and suitable equipment, and such foundry is inspected about twice a year by representative of Nebraska Department of Labor who makes no additional requirements, employer has complied with the statute. *Rzeszotarski v. American Smelting & Refining Co.*, 133 Neb. 825, 277 N.W. 334 (1938).

Where ventilators and windows would tend to carry away dust and fumes, trial court was not required to instruct jury with reference to this section. *Grover v. Aaron Ferer & Sons*, 122 Neb. 755, 241 N.W. 539 (1932).

Employer has burden of proof to show that the installation of a fan or other device for the removal of dust and fumes is not practicable. *Grant Storage Battery Co. v. DeLay*, 87 F.2d 726 (8th Cir. 1937).

48-404 Sanitation; duty of employer.

All of the aforesaid places shall be kept clean and free from effluvia arising from any drain, privy or nuisance, and shall be ventilated and kept in a sanitary

condition. The Department of Labor or any person authorized by the department may require such changes or additions to be made in any of the aforesaid places as will promote the best measures of sanitation.

Source: Laws 1911, c. 67, § 4, p. 300; Laws 1913, c. 103, § 1, p. 259; R.S.1913, § 3591; Laws 1919, c. 190, tit. IV, art. IV, § 4, p. 559; C.S.1922, § 7685; C.S.1929, § 48-404; R.S.1943, § 48-404.

48-405 Grinding machines; dust; blowers required.

All persons, companies or corporations operating any factory or workshop where grinding wheels, or grinding machines, emery wheels or emery belts of any description are used, whether solid emery, leather covered, felt, canvas, linen, paper, cotton or wheels or belts rolled or coated with emery or carborundum or cotton wheels used as buffs, shall, when deemed necessary by the Department of Labor, provide such wheels or belts with blowers or similar apparatus, which shall be placed over, beside or under such wheels or belts in such manner as to protect the person or persons using the same from particles of dust produced and caused thereby, and to carry away the dust arising from or thrown off by such wheels or belts while in operation, directly to the outside of the building or to some receptacle placed so as to receive and confine such dust; *Provided*, grinding machines upon which water is used at the point of grinding contact and other wheels used for tool grinding shall be exempt from the provisions of this section.

Source: Laws 1911, c. 67, § 5, p. 301; Laws 1913, c. 103, § 1, p. 259; R.S.1913, § 3592; Laws 1919, c. 190, tit. IV, art. IV, § 5, p. 559; C.S.1922, § 7686; C.S.1929, § 48-405; R.S.1943, § 48-405.

Applicability of act is limited to those operating factory or workshop. Quist v. Duda, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-406 Emery wheels and grindstones; use and operation.

No emery wheels or grindstones in any factory, mill or workshop, shall be used when known to the person using the same to be cracked or otherwise defective, nor operated at a greater speed than indicated or guaranteed by the manufacturer of such emery wheel or grindstone.

Source: Laws 1911, c. 67, § 6, p. 301; R.S.1913, § 3593; Laws 1919, c. 190, tit. IV, art. IV, § 6, p. 560; C.S.1922, § 7687; C.S.1929, § 48-406; R.S.1943, § 48-406.

48-407 Emery wheels and grindstones; hoods or hoppers required.

Every emery wheel and grindstone shall be fitted with a sheet or cast iron hood or hopper, of such form so adjusted that the dust or refuse therefrom will fall or be thrown into such hood or hopper by centrifugal force, and be carried off by the current of air into a suction pipe.

Source: Laws 1911, c. 67, § 7, p. 301; R.S.1913, § 3594; Laws 1919, c. 190, tit. IV, art. IV, § 7, p. 560; C.S.1922, § 7688; C.S.1929, § 48-407; R.S.1943, § 48-407.

Applicability of act is limited to those operating factory or workshop. Quist v. Duda, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-408 Emery wheels; suction pipes required; capacity.

Every such wheel six inches or less in diameter shall be provided with a three-inch suction pipe; wheels six inches to twenty-four inches in diameter,

with a four-inch suction pipe; wheels from twenty-four inches to thirty-six inches in diameter, with a five-inch suction pipe; and every wheel exceeding thirty-six inches in diameter shall be provided with a suction pipe not less than six inches in diameter.

The suction pipe from each wheel shall be of full size to its terminus, and a suction pipe to which smaller pipes are attached shall, in its capacity, be equal to the combined capacities of all smaller pipes attached thereto, and the discharge pipe shall be of as large capacity as, or larger capacity than, the combined capacities of all suction pipes.

Source: Laws 1911, c. 67, § 8, p. 302; R.S.1913, § 3595; Laws 1919, c. 190, tit. IV, art. IV, § 8, p. 560; C.S.1922, § 7689; C.S.1929, § 48-408; R.S.1943, § 48-408.

48-409 Machinery; safety devices required.

Every person operating a plant where machinery is used, shall provide such guards, boxing, screens or other appliances as will protect employees against injury from belting, shafting, gearing, elevators, drums, saws, cogs, electric currents, molten metal or hot liquid. He shall also furnish and supply belt shifters which can be operated from the floor. All exposed cogs or gears shall be enclosed in metal casings or woven wire screens. Protruding set screws in collars and couplings of shafting or other revolving machinery shall be counter-sunk or covered with metal boxing. Pulleys, belts and projections of or from ends of shaftings shall be protected by boxing or enclosing with metal or other suitable material. Belts shall not rest on shafting in motion, but rest hooks shall be provided to hold belting free therefrom. Roll guards shall be placed on roll-feed machines fed by hand at the point where the material is fed, and a device for instantly stopping the machine by the hand or foot shall also be provided within reach of the operator when operating the machine.

Source: Laws 1911, c. 67, § 9, p. 302; Laws 1913, c. 103, § 1, p. 260; R.S.1913, § 3597; Laws 1919, c. 190, tit. IV, art. IV, § 9, p. 560; C.S.1922, § 7690; C.S.1929, § 48-409; R.S.1943, § 48-409.

Employee's acceptance of benefits under Workmen's Compensation Act ordinarily constitutes release to employer of claims at law arising from the injury. *Edelman v. Ralph Printing & Lithographing, Inc.*, 189 Neb. 763, 205 N.W.2d 340 (1973).

Evidence did not establish violation of this section. *Goodwin v. Epsen Lithographing Co.*, 183 Neb. 281, 160 N.W.2d 183 (1968).

Words "operating a plant" would include corporation carrying on an elevator business. *Fosler v. Aden*, 175 Neb. 535, 122 N.W.2d 494 (1963).

Applicability of section is limited to operator of plant. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

A farming and stockfeeding business is not a plant within this section. *Groat v. Clausen*, 139 Neb. 689, 298 N.W. 563 (1941).

Factory act is not intended to narrow compensation act. Fact that employer's violation of this section was cause of injury to employee does not entitle latter to sue at common law. *Navracel v. Cudahy Packing Co.*, 109 Neb. 506, 191 N.W. 659 (1922), reh'g denied, 109 Neb. 512, 193 N.W. 768 (1923).

Where defendant failed to provide rest hook to hold belting free from shafting, it was proper to submit to jury failure to comply with statute as evidence of negligence. *Hellerich v. Central Granaries Co.*, 104 Neb. 818, 178 N.W. 919 (1920).

Violation of this section constituted gross negligence. *McCarthy v. Village of Ravenna*, 99 Neb. 674, 157 N.W. 629 (1916).

48-410 Revolving machines; screens required.

A metal or other suitable screen shall be placed around each laundry extractor or other exposed high-speed revolving machinery.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 10, p. 561; C.S.1922, § 7691; C.S.1929, § 48-410; R.S.1943, § 48-410.

48-411 Woodworking machinery; safety devices.

Wood planers, wood shapers, swing saws, equalizing saws, circular heading jointers, wood polishers, buzz planers, lathe bolters, and all similar machinery, shall be equipped with requisite safety appliances.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 11, p. 561; C.S.1922, § 7692; C.S.1929, § 48-411; R.S.1943, § 48-411.

48-412 Safety appliances; codes and standards.

All safety appliances prescribed by sections 48-401 to 48-424 shall be subject to the approval of the Commissioner of Labor. The commissioner is directed and empowered to formulate, adopt, publish and enforce such safety codes, orders, rules and standards as he deems necessary, in order that all employments and places of employment shall be, in all respects, so constructed, equipped, arranged, operated and maintained as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein and frequenting the same, as the nature of the employment will reasonably permit. Such codes as may be adopted shall be subject to modification, amendment or repeal at any time, in the discretion of the commissioner.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 12, p. 561; C.S.1922, § 7693; Laws 1929, c. 138, § 1, p. 492; C.S.1929, § 48-412; R.S.1943, § 48-412; Laws 1969, c. 400, § 1, p. 1390.

Safety appliance codes apply only where the relationship of employer and employee exists. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

The violation of a provision of a safety code intended to protect life, health, and safety of employees constitutes action-

able negligence but such negligence must be shown to have been the proximate cause of the injury. *Wertz v. Lincoln Liberty Life Ins. Co.*, 152 Neb. 451, 41 N.W.2d 740 (1950).

Rules of Department of Labor are not applicable to a farming and stockraising business. *Groat v. Clausen*, 139 Neb. 689, 298 N.W. 563 (1941).

48-413 Safety codes; adopt, amend, or repeal; Nebraska Safety Code for Building Construction; procedures.

(1) The Commissioner of Labor shall, from time to time, create advisory committees composed of employers, employees, and such other persons as the commissioner may designate, to advise him in formulating, adopting, amending or repealing such codes, orders, rules and standards. Before any code is adopted, amended or repealed there shall be a public hearing thereon, notice of which hearing shall be given such publicity as the commissioner deems necessary. The commissioner may make or cause to be made such investigations and surveys as will assist in the formulation and modification of such codes, orders, rules and standards.

(2) A safety code may be adopted as a regulation by the Commissioner of Labor and shall thereafter be known as the Nebraska Safety Code for Building Construction. A copy of this code, if so adopted, shall be kept on file in the office of the Commissioner of Labor. Any amendment or change thereafter made in such code shall become effective in this state only after public notice and hearing thereon as provided in the Administrative Procedure Act.

Source: Laws 1929, c. 138, § 1, p. 493; C.S.1929, § 48-412; R.S.1943, § 48-413; Laws 1969, c. 400, § 2, p. 1391.

Cross References

Administrative Procedure Act, see section 84-920.

48-414 Safety codes; enforcement; violation; penalty; coverage of sections.

It shall be the duty of the Commissioner of Labor to make or cause to be made periodic inspections of all places of employment for the purpose of enforcing the provisions of such safety codes as have been adopted, and any inspector or employee of the commissioner may order the discontinuance of the use or operation of any machine or device, or the discontinuance of work at any location, which does not conform to the provisions of the code or codes pertaining thereto. The commissioner shall adopt a suitable label to be attached to any such machine or device stating that the use or operation of such machine or device is dangerous and has been ordered discontinued. The commissioner shall adopt a similar label or sign to be posted at any location where work has been ordered discontinued. Such label shall not be removed except upon authority from the commissioner. Any employer or employee who uses or operates, or causes to be used or operated, any machine or device so labeled, or who continues work at any location where work has been ordered discontinued, shall be guilty of a Class II misdemeanor. Railroad companies engaged in interstate or foreign commerce are not within the provisions of sections 48-412 to 48-416. Public power and irrigation districts, under Chapter 70, article 6, are subject to the provisions of Chapter 48, article 4.

Source: Laws 1929, c. 138, § 1, p. 493; C.S.1929, § 48-412; R.S.1943, § 48-414; Laws 1969, c. 400, § 3, p. 1391; Laws 1977, LB 40, § 282; Laws 1979, LB 467, § 1.

Evidence that Department of Labor has inspected and approved a particular machine is prima facie evidence that its use is not in violation of this act. *Goodwin v. Epsen Lithographing Co.*, 183 Neb. 281, 160 N.W.2d 183 (1968).

48-415 Safety codes; validity or reasonableness; appeal to Commissioner of Labor.

Any person in interest, or his duly authorized agent, may file a petition with the Commissioner of Labor for a review of the validity or reasonableness of any code, order, rule or standard made under the provisions of section 48-412. The commissioner shall, as soon as practicable thereafter, hold a hearing to determine the issues raised, and shall give ample notice of the time and place of such hearing to the petitioner, and to such other interested persons as the commissioner may determine.

Source: Laws 1929, c. 138, § 1, p. 493; C.S.1929, § 48-412; R.S.1943, § 48-415; Laws 1969, c. 400, § 4, p. 1392.

48-416 Appeal; procedure.

Any person in interest who is dissatisfied with the decision of the Commissioner of Labor may appeal the decision, and the decision shall be in accordance with the Administrative Procedure Act.

Source: Laws 1929, c. 138, § 1, p. 494; C.S.1929, § 48-412; R.S.1943, § 48-416; Laws 1969, c. 400, § 5, p. 1392; Laws 1988, LB 352, § 84.

Cross References

Administrative Procedure Act, see section 84-920.

48-417 Electric plants; safety regulations.

Signs or indicating lamps shall be placed at all switches in electric light and power plants or other places where high-pressure currents are used, to show whether the current is on or off the circuit. When current is turned off a circuit

for repair, the switch shall first be tagged, the tag bearing the name of the person for whom it is turned off. The tag shall not be removed or the current turned on until the person for whom it was tagged shall notify the operator that his work has ceased.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 13, p. 561; C.S.1922, § 7694; C.S.1929, § 48-413; R.S.1943, § 48-417.

48-418 Transferred to section 48-2512.01.

48-418.01 Repealed. Laws 2007, LB 265, § 38.

48-418.02 Repealed. Laws 2007, LB 265, § 38.

48-418.03 Repealed. Laws 2007, LB 265, § 38.

48-418.04 Repealed. Laws 2007, LB 265, § 38.

48-418.05 Repealed. Laws 2007, LB 265, § 38.

48-418.06 Repealed. Laws 2007, LB 265, § 38.

48-418.07 Repealed. Laws 2007, LB 265, § 38.

48-418.08 Repealed. Laws 2007, LB 265, § 38.

48-418.09 Repealed. Laws 2007, LB 265, § 38.

48-418.10 Repealed. Laws 2007, LB 265, § 38.

48-418.11 Repealed. Laws 2007, LB 265, § 38.

48-418.12 Repealed. Laws 2007, LB 265, § 38.

48-418.13 Repealed. Laws 1993, LB 45, § 2.

48-418.14 Repealed. Laws 2007, LB 265, § 38.

48-419 Steam boilers; repairs; safety regulations.

Where a number of boilers deliver to a common steam main, they shall be equipped with a shutoff or throttle valve for each boiler to take it out of service for repairs and inspection necessitating the entry therein of workmen. A metal shield shall be constructed covering the hand wheel of the valve hinging in the center and containing hasp and lock. The shield shall be painted red and marked with the words Man in boiler. The workman shall be allowed to retain key in his possession while in such boiler.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 15, p. 561; C.S.1922, § 7696; C.S.1929, § 48-415; R.S.1943, § 48-419.

48-420 Fire escapes; when required.

Every factory or other institution, more than two stories in height, shall be equipped with outside fireproof iron stairways, chutes or toboggans, and one automatic fire escape for every fifteen persons working or congregating therein

at any time, who, for any reason, are unable to reach or use the outside fireproof stairways, chutes or toboggans.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 16, p. 562; C.S.1922, § 7697; C.S.1929, § 48-416; R.S.1943, § 48-420.

Under former penal statute relating to fire escapes, law will not be extended to include agents of owners who fail, after notice, to erect fire escapes. *State v. Dailey*, 76 Neb. 770, 107 N.W. 1094 (1906).

48-421 Accidents; reports; contents.

Every person operating a plant where machinery is used, shall report in writing to the Department of Labor all fatal accidents within forty-eight hours after their occurrence, and all other accidents within two weeks after their occurrence. Such report shall state fully the cause of the accidents, the nature and extent of the injuries, and the probable loss of time which will result therefrom.

Source: Laws 1911, c. 67, § 10, p. 302; Laws 1913, c. 103, § 1, p. 261; R.S.1913, § 3598; Laws 1919, c. 190, tit. IV, art. IV, § 17, p. 562; C.S.1922, § 7698; C.S.1929, § 48-417; R.S.1943, § 48-421.

Applicability of act is limited to operator. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-422 Violations; liability for injuries.

Every person operating a plant where machinery is used who shall violate any of the provisions of sections 48-401 to 48-424 shall be liable in damages to any person injured, as a result thereof, or to the heirs of any person who shall have died as a result thereof.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 18, p. 562; C.S.1922, § 7699; C.S.1929, § 48-418; R.S.1943, § 48-422.

Employee's acceptance of benefits under Workmen's Compensation Act ordinarily constitutes release to employer of claims at law arising from the injury. *Edelman v. Ralph Printing & Lithographing, Inc.*, 189 Neb. 763, 205 N.W.2d 340 (1973).

Recovery was denied in action brought under this section against manager of elevator. *Fosler v. Aden*, 175 Neb. 535, 122 N.W.2d 494 (1963).

Applicability of act is limited to operator. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

Employer failing to comply with statutory duty for benefit of employees can be held liable for injuries to employees only if there is a causal connection between his negligence and the injury of which the employee complains. *Smith v. Morton Motor Co.*, 145 Neb. 396, 16 N.W.2d 843 (1944).

Where evidence failed to show that any machinery was used in room where plaintiff worked, court was not required to instruct jury with reference to this section. *Grover v. Aaron Ferer & Sons*, 122 Neb. 755, 241 N.W. 539 (1932).

Notwithstanding injury to minor employee was caused by employer's violation of statute requiring screens to protect from machinery, Workmen's Compensation Act applied and employer was not liable at common law. *Navracel v. Cudahy Packing Co.*, 109 Neb. 506, 191 N.W. 659 (1922), reh'g denied, 109 Neb. 512, 193 N.W. 768 (1923).

Where appliances furnished for protection of employee are of standard make and in common use, and no defect is shown therein, cause of action is not made out for not furnishing proper appliances. *Grant Storage Battery Co. v. DeLay*, 87 F.2d 726 (8th Cir. 1937).

48-423 Violations; assumption of risk.

The continuance by any person in the employ of any such operator shall not be deemed an assumption of the risks of such employment.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 19, p. 562; C.S.1922, § 7700; C.S.1929, § 48-419; R.S.1943, § 48-423.

Cross References

Actions against railroad or street railroad company, employee shall not be held to have assumed risk where company or its agents, servants, or employees have been guilty of negligence, see section 25-21,184.

Applicability of act is limited to operator. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

Employee assumes risk arising from lead poisoning, where adequate warning and instructions to prevent injury are given.

Grant Storage Battery Co. v. DeLay, 87 F.2d 726 (8th Cir. 1937).

48-424 Health and safety regulations; violations; penalty.

Every person who shall violate any of the provisions of sections 48-401 to 48-423 shall be guilty of a Class II misdemeanor.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 20, p. 562; C.S.1922, § 7701; C.S.1929, § 48-420; R.S.1943, § 48-424; Laws 1965, c. 284, § 1, p. 813; Laws 1977, LB 40, § 284.

Requirements of act did not apply to a landlord who was not occupant of building or operator of safety device. Quist v. Duda, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-425 Scaffolds or staging; safety requirements.

All scaffolds, hoists, cranes, stays, ladders, supports or other mechanical contrivances used in the erection, repairing, alteration, removal or painting of any house, building, bridge, viaduct or other structure, shall be erected and constructed in a safe, suitable and proper manner. Scaffolding or staging, swung or suspended from an overhead support and more than twenty feet from the ground floor, shall have, where practicable, a safety rail properly bolted, secured and braced, rising at least thirty-four inches above the floor or main portion of such scaffolding or staging, and extending along the entire length of the outside and ends thereof and properly attached thereto, and such scaffolding and staging shall be so fastened as to prevent the same from swaying from the building or structure.

Source: Laws 1911, c. 65, § 1, p. 289; R.S.1913, § 3602; Laws 1919, c. 190, tit. IV, art. IV, § 21, p. 562; C.S.1922, § 7702; C.S.1929, § 48-421; R.S.1943, § 48-425.

- 1. Scaffolding or staging
- 2. Miscellaneous

1. Scaffolding or staging

This section does not preclude indemnification against a breach of the statutory duty concerning scaffolding. Oddo v. Speedway Scaffold Co., 233 Neb. 1, 443 N.W.2d 596 (1989).

It is the responsibility of a subcontractor who owns, erects, and controls scaffold for use of his own employees to comply with safety regulations hereunder. Hand v. Rorick Constr. Co., 190 Neb. 191, 206 N.W.2d 835 (1973).

Duty to secure ladder was that of plaintiff independent contractor rather than of defendant general contractor. Laaker v. Hartman, 186 Neb. 774, 186 N.W.2d 494 (1971).

Defective scaffold formed the basis of cross-petition by defendant against codefendant. Rogers v. Western Electric Co., 179 Neb. 359, 138 N.W.2d 423 (1965).

Prior case involving scaffolding on building is distinguished. Fosler v. Aden, 175 Neb. 535, 122 N.W.2d 494 (1963).

Where scaffold was supplied under contract of bailment, bailor was liable if scaffold did not meet requirements of statute. Baer v. Schaap, 168 Neb. 578, 97 N.W.2d 207 (1959).

Scaffold must be safe, suitable, and proper for the purpose for which it is used, and employer is liable if it does not meet this requirement. Johnson v. Weborg, 142 Neb. 516, 7 N.W.2d 65 (1942).

Issue of responsibility for proper erection and maintenance of ladder was question for a jury. Farmers Co-op Elevator Ass'n. v. Strand, 382 F.2d 224 (8th Cir. 1967).

Erection of an unsafe scaffold is negligence per se. Continental Can Co. v. Horton, 250 F.2d 637 (8th Cir. 1957).

2. Miscellaneous

This section does not apply to employer-independent contractor relationships. Semler v. Sears, Roebuck, & Co., 268 Neb. 857, 689 N.W.2d 327 (2004).

Section is constitutional as to owner of real estate. Butera v. Mardis Co., 99 Neb. 815, 157 N.W. 1024 (1916).

48-426 Buildings; construction; supports, floor strength.

If in any house, building or structure in process of erection or construction, except a private barn, or a private house, the distance between the enclosed walls is more than twenty-four feet in the clear, there shall be built, kept and maintained, proper intermediate supports for the joists, which supports shall be either brick walls or iron or steel columns, beams, trusses or girders. The floors

in all such houses, buildings or structures shall be capable of bearing in all their parts, in addition to the weight of the floor construction, partitions and permanent fixtures and mechanisms that may be set upon the same, a live load of fifty pounds for every square foot of floor surface.

Source: Laws 1911, c. 65, § 2, p. 290; R.S.1913, § 3603; Laws 1919, c. 190, tit. IV, art. IV, § 22, p. 563; C.S.1922, § 7703; C.S.1929, § 48-422; R.S.1943, § 48-426.

48-427 Buildings; construction; floor loads; notice.

The owner of every house, building or structure, except a private barn or a private house, shall affix and display conspicuously on each floor of such building during construction, a placard, stating the load per square foot of floor surface which may, with safety, be applied to the particular floor during construction. If the strength of different parts of any floor varies, then there shall be placards for each varying part of such floor. It shall be unlawful to load any such floors, or any part thereof, to a greater extent than the load indicated on the placard, and all such placards shall be verified and approved by the Department of Labor, or other proper authority in the city or village charged with the enforcement of building laws.

Source: Laws 1911, c. 65, § 3, p. 290; R.S.1913, § 3604; Laws 1919, c. 190, tit. IV, art. IV, § 23, p. 563; C.S.1922, § 7704; C.S.1929, § 48-423; R.S.1943, § 48-427.

48-428 Scaffolding; platforms; inspection; notice; duty to render safe.

Whenever it shall come to the notice of the Department of Labor or the local authority in any city or village of this state, charged with the duty of enforcing the building laws, that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons or ropes of any swinging or stationary scaffolding, platform or other similar device, used in the construction, alteration, removing, repairing, cleaning or painting of buildings, bridges or viaducts within this state are unsafe, or liable to prove dangerous to the life or limb of any person, the department, or such local authority or authorities, shall immediately cause an inspection to be made of such scaffolding, platform or device, or the slings, hammocks, blocks, pulleys, stays, braces, ladders, iron or other parts connected therewith. If, after examination, such scaffolding, platform or device, or any of such parts, is found to be dangerous to the life or limb of any person, the department or such local authority shall at once notify the person responsible for its erection or maintenance of such fact and warn him against the use, maintenance or operation thereof and prohibit the use thereof, and require the same to be altered and reconstructed so as to avoid such danger. Such notice may be served personally upon the person responsible for its erection or maintenance or by conspicuously affixing it to the scaffold, platform or other such device, or the part thereof declared to be unsafe. After such notice has been so served or affixed the person responsible therefor shall cease using and immediately remove such scaffolding, platform or other device or part thereof, and alter or strengthen it in such manner as to render it safe. The department, or such local authority, whose duty it is to examine or test any scaffolding, platform or other similar device, or part thereof, required to be erected and maintained by this section, shall have free access at all reasonable hours to any building or structure or premises containing such scaffolding, platform or other

similar device, or parts thereof, or where they may be in use. All swinging and stationary scaffolding, platforms or other devices shall be so constructed as to bear four times the maximum weight required to be dependent thereon, or placed thereon when in use, and such swing, scaffolding, platform or other device shall not be so overloaded or crowded as to render the same unsafe or dangerous.

Source: Laws 1911, c. 65, § 4, p. 291; R.S.1913, § 3605; Laws 1919, c. 190, tit. IV, art. IV, § 24, p. 563; C.S.1922, § 7705; C.S.1929, § 48-424; R.S.1943, § 48-428.

It is the responsibility of a subcontractor who owns, erects, and controls scaffold for use of his own employees to comply with safety regulations hereunder. *Hand v. Rorick Constr. Co.*, 190 Neb. 191, 206 N.W.2d 835 (1973).

48-429 Scaffolding; staging; safety devices.

Any person employing or directing another to perform labor of any kind in the erecting, altering, repairing or painting of any water pipe, standpipe, tank, smokestack, chimney, tower, steeple, pole, staff, dome or cupola, when the use of any scaffolding, staging, swing, hammock, support, temporary platform or other similar contrivance is required or used in the performance of such labor, shall keep and maintain at all times, while such labor is being performed, and such mechanical device is in use or operation, a safe and proper scaffold, stay, support or other suitable device, not more than sixteen feet below such working scaffold, staging, swing, hammock, support, or temporary platform, when such work is being performed at a height of thirty-two feet or more.

Source: Laws 1911, c. 65, § 5, p. 292; R.S.1913, § 3606; Laws 1919, c. 190, tit. IV, art. IV, § 25, p. 564; C.S.1922, § 7706; C.S.1929, § 48-425; R.S.1943, § 48-429.

48-430 Buildings; floors; safety regulations.

All contractors and owners, when constructing buildings where the plans and specifications require the floors to be arched between the beams thereof, or where the floors or filling in between the floors are fireproof material or brick work, shall complete the flooring or filling in as the building progresses, to within at least two tiers or beams below that on which the iron work is being erected. If the plans and specifications of such building do not require filling in between the beams of floors with brick or fireproof material, all contractors for carpenter work in the course of construction shall lay the underflooring thereof, or a safe temporary floor on each story as the building progresses to within at least two stories or floors below the story where the work is being performed. If the floor beams are of iron or steel, the contractors for the iron or steel work of buildings in the course of construction, or the owners of such buildings shall thoroughly plank over the entire tier or iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising and lowering of materials to be used in the construction of buildings, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

Source: Laws 1911, c. 65, § 6, p. 293; R.S.1913, § 3607; Laws 1919, c. 190, tit. IV, art. IV, § 26, p. 565; C.S.1922, § 7707; C.S.1929, § 48-426; R.S.1943, § 48-430.

48-431 Buildings; construction; elevating machines or hoists; safety regulations.

If elevating machines or hoisting apparatus are used within a building in the course of construction for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be enclosed or fenced in on all sides by a substantial barrier or railing at least eight feet in height. Any hoisting machines or engines used in such building construction shall, where practicable, be set up or placed on the ground, and where it is necessary in the construction of such building to place such hoisting machine or engine on some floor above the ground floor, such machine or engine must be properly secured and supported with a foundation capable of safely sustaining twice the weight of such machine or engine. If a building in course of construction is five stories or more in height, no material needed for such construction shall be hoisted or lifted over public streets or alleys unless such street or alley shall be barricaded from use by the public. The chief officer in any city or village charged with the enforcement of local building laws and ordinances, shall cooperate with the Department of Labor in enforcing the provisions of sections 48-425 to 48-435.

Source: Laws 1911, c. 65, § 7, p. 293; R.S.1913, § 3608; Laws 1919, c. 190, tit. IV, art. IV, § 27, p. 565; C.S.1922, § 7708; C.S.1929, § 48-427; R.S.1943, § 48-431.

48-432 Buildings; elevating machines or hoists; signals.

If elevating machines or hoisting apparatus, operated or controlled by other than hand power, are used in the construction, alteration or removal of any building or other structure, a complete and adequate system of communication by means of signals shall be provided and maintained by the owner, contractor or subcontractor, during the use and operation of such elevating machines or hoisting apparatus.

Source: Laws 1911, c. 65, § 8, p. 294; R.S.1913, § 3609; Laws 1919, c. 190, tit. IV, art. IV, § 28, p. 566; C.S.1922, § 7709; C.S.1929, § 48-428; R.S.1943, § 48-432.

48-433 Building plans; duty of architects or draftsmen; violation; penalty.

All architects or draftsmen in preparing plans, specifications or drawings to be used in the erection, repairing, altering or removing of any building or structure within the terms and provisions of sections 48-425 to 48-435, shall provide in such plans, specifications and drawings for all the permanent structural features or requirements specified in said sections. Any person violating the provisions of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1911, c. 65, § 9, p. 294; R.S.1913, § 3610; Laws 1919, c. 190, tit. IV, art. IV, § 29, p. 566; C.S.1922, § 7710; C.S.1929, § 48-429; R.S.1943, § 48-433; Laws 1977, LB 40, § 285.

48-434 Violations; penalty; prosecution.

(1) Any person violating any of the provisions of sections 48-425 to 48-432 shall be guilty of a Class II misdemeanor.

(2) All prosecutions for offenses relating to health and safety laws and regulations under sections 48-401 to 48-435 shall be brought in the name of the State of Nebraska before any court having jurisdiction thereof. It shall be the duty of all county attorneys in their respective counties to prosecute all persons charged with offenses against the health and safety laws and regulations of this state.

Source: Laws 1911, c. 65, § 10, p. 295; R.S.1913, § 3611; Laws 1919, c. 190, tit. IV, art. IV, § 30, p. 566; C.S.1922, § 7711; C.S.1929, § 48-430; R.S.1943, § 48-434; Laws 1969, c. 400, § 6, p. 1393; Laws 1973, LB 2, § 1; Laws 1977, LB 40, § 286.

Effect of 1919 amendment to this section discussed. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

48-435 Buildings; construction; violations; assumption of risk.

The continuance by any person in the employ of any such operator shall not be deemed an assumption of the risk of such employment.

Source: Laws 1911, c. 65, § 11, p. 296; R.S.1913, § 3612; Laws 1919, c. 190, tit. IV, art. IV, § 31, p. 567; C.S.1922, § 7712; C.S.1929, § 48-431; R.S.1943, § 48-435.

This section did not apply to plaintiff independent contractor as he was not employee of defendant general contractor. *Laaker v. Hartman*, 186 Neb. 774, 186 N.W.2d 494 (1971).

Effect of 1919 amendment to this section discussed. *Quist v. Duda*, 159 Neb. 393, 67 N.W.2d 481 (1954).

Statute, insofar as it makes liable owner of lot on which building is being erected, is constitutional. *Butera v. Mardis Co.*, 99 Neb. 815, 157 N.W. 1024 (1916).

Assumption of risk doctrine had no bearing in determining negligence of owner of property. *Farmers Co-op Elevator Assn. v. Strand*, 382 F.2d 224 (8th Cir. 1967).

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 requirements 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.

48-439 Posting of warning signs.

The owner, agent or employer responsible for the operation of equipment shall post and maintain in plain view of the operator on each crane, derrick, driver, or similar apparatus, any part of which is capable of vertical, lateral or swinging motion, an approved weather resistant warning sign legible at twelve feet reading: Warning—Unlawful to operate this equipment within ten feet of high voltage conductors; and shall post and maintain similar signs on the outside of the equipment in such locations as to be readily visible to other persons engaged in the work operation or in the vicinity of the work operation.

Source: Laws 1969, c. 390, § 4, p. 1372.

48-440 Repealed. Laws 2020, LB1016, § 12.

48-441 Sections, when not applicable.

Nothing in sections 48-436 to 48-442 shall apply to any authorized or qualified person as defined in section 48-436 or the owner, agent, or employer of such persons in the performance of work or the moving of equipment in the conduct of its business.

Source: Laws 1969, c. 390, § 6, p. 1373.

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.

48-443 Safety committee; when required; membership; employee rights and remedies.

(1)(a) Not later than January 1, 1994, every public and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(b) A client of a professional employer organization is not relieved of its obligation to establish a safety committee based on its workers being co-employees of the professional employer organization. A professional employer agreement shall not allocate the client's responsibility to establish a safety committee to the professional employer organization. For purposes of this subdivision, the terms client, professional employer organization, and professional employer agreement shall have the same meaning as in section 48-2702. This subdivision becomes operative on January 1, 2012.

(2)(a) For employers subject to collective-bargaining agreements, the establishment of the safety committee shall be accomplished through the collective-bargaining process.

(b) For employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the employer.

(3) An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

Source: Laws 1993, LB 757, § 32; Laws 2010, LB579, § 19.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-444 Safety committee; failure to establish; violation; penalty.

If the Commissioner of Labor finds, after notice and hearing, that an employer has failed to establish a safety committee pursuant to section 48-443 within fifteen days after notification by the Commissioner of Labor of the obligation to do so, the Commissioner of Labor may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

Source: Laws 1993, LB 757, § 33.

48-445 Safety committee; rules and regulations.

The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out sections 48-443 and 48-444.

Source: Laws 1993, LB 757, § 34.

48-446 Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability.

(1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-7524;

(c) Whether the employer is covered by workers' compensation insurance under section 44-3,158;

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. 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.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 757, § 36; Laws 1994, LB 1066, § 37; Laws 2000, LB 1119, § 41; Laws 2001, LB 180, § 6; Laws 2007, LB117, § 34.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

48-447 Repealed. Laws 1999, LB 2, § 3.

48-448 Repealed. Laws 1999, LB 2, § 3.

48-449 Repealed. Laws 1999, LB 2, § 3.

ARTICLE 5

EMPLOYMENT AGENCIES

Section	
48-501.	Repealed. Laws 1977, LB 162, § 24.
48-501.01.	Repealed. Laws 2020, LB1016, § 12.
48-502.	Repealed. Laws 1977, LB 162, § 24.
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.
48-509.	Repealed. Laws 1972, LB 1460, § 17.
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.
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.
48-522.	Repealed. Laws 1977, LB 162, § 24.

Section
 48-523. Repealed. Laws 2020, LB1016, § 12.
 48-524. Repealed. Laws 2020, LB1016, § 12.

48-501 Repealed. Laws 1977, LB 162, § 24.
48-501.01 Repealed. Laws 2020, LB1016, § 12.
48-502 Repealed. Laws 1977, LB 162, § 24.
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.
48-509 Repealed. Laws 1972, LB 1460, § 17.
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.
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.
48-522 Repealed. Laws 1977, LB 162, § 24.
48-523 Repealed. Laws 2020, LB1016, § 12.
48-524 Repealed. Laws 2020, LB1016, § 12.

**ARTICLE 6
 EMPLOYMENT SECURITY**

Section
 48-601. Act, how cited.
 48-602. Terms, defined.

LABOR

- Section
- 48-603. Employer, defined.
 - 48-603.01. Indian tribes; applicability of Employment Security Law.
 - 48-604. Employment, defined.
 - 48-605. Commissioner; salary.
 - 48-606. Commissioner; duties; powers; annual report; schedule of fees.
 - 48-606.01. Commissioner; office space; acquire; approval of Department of Administrative Services.
 - 48-607. Rules and regulations; adoption; procedure.
 - 48-608. Commissioner; distribution; duty.
 - 48-609. Personnel; powers of commissioner; bond or insurance; retirement system.
 - 48-610. Repealed. Laws 2009, LB 631, § 15.
 - 48-611. Commissioner; general duties.
 - 48-612. Employers; records and reports required; privileged communications; violation; penalty.
 - 48-612.01. Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.
 - 48-613. Oaths; depositions; subpoenas.
 - 48-614. Subpoenas; contumacy or disobedience; punishable as contempt; penalty.
 - 48-615. Repealed. Laws 1987, LB 277, § 1.
 - 48-616. Commissioner of Labor; cooperation with Secretary of Labor of the United States; duties.
 - 48-617. Unemployment Compensation Fund; establishment; composition; investment.
 - 48-618. Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; Unemployment Trust Fund; investment; bond or insurance.
 - 48-619. Unemployment Trust Fund; withdrawals.
 - 48-620. Unemployment Trust Fund; discontinuance.
 - 48-621. Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.
 - 48-622. Funds lost and improper expenditures; replacement; reimbursement.
 - 48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.
 - 48-622.02. Nebraska Training and Support Cash Fund; created; use; investment; Administrative Costs Reserve Account; created; use.
 - 48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.
 - 48-623. Benefits; how paid.
 - 48-624. Benefits; weekly benefit amount; calculation.
 - 48-625. Benefits; weekly payment; how computed.
 - 48-626. Benefits; maximum annual amount; determination.
 - 48-627. Benefits; eligibility conditions; availability for work; requirements.
 - 48-627.01. Benefits; monetary eligibility; earned wages; adjustment.
 - 48-628. Benefits; conditions disqualifying applicant; exceptions.
 - 48-628.01. Benefits; disqualification; receipt of other unemployment benefits.
 - 48-628.02. Benefits; disqualification; receipt of other remuneration.
 - 48-628.03. Benefits; disqualification; student.
 - 48-628.04. Benefits; disqualification; alien.
 - 48-628.05. Benefits; disqualification; sports or athletic events.
 - 48-628.06. Benefits; disqualification; educational institution.
 - 48-628.07. Benefits; training.
 - 48-628.08. Benefits; disqualification; leave of absence.
 - 48-628.09. Benefits; disqualification; labor dispute.
 - 48-628.10. Benefits; disqualification; discharge for misconduct.
 - 48-628.11. Benefits; disqualification; multiple disqualifications for prohibited acts by employee.
 - 48-628.12. Benefits; disqualification; leave work voluntarily without good cause.
 - 48-628.13. Good cause for voluntarily leaving employment, defined.
 - 48-628.14. Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.

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- Section
- 48-628.15. Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.
- 48-628.16. Extended benefits; payments not required; when.
- 48-628.17. Additional unemployment benefits; conditions; amount; when benefits payable.
- 48-629. Claims; rules and regulations for filing.
- 48-629.01. Claims; advisement to claimant; amounts deducted; how treated.
- 48-630. Claims; determinations by adjudicator.
- 48-631. Claims; redetermination; time; notice; appeal.
- 48-632. Claims; determination; notice; persons entitled; employer; rights; duties.
- 48-633. Repealed. Laws 2012, LB 1058, § 17.
- 48-634. Administrative appeal; notice; time allowed; hearing; parties.
- 48-635. Administrative appeal; procedure; rules of evidence; record.
- 48-636. Administrative appeal; decision; conclusiveness.
- 48-637. Administrative appeal; decision; effect in subsequent proceeding; certification of question.
- 48-638. Appeal to district court; procedure.
- 48-639. Repealed. Laws 1988, LB 352, § 190.
- 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.
- 48-644. Benefits; payment; appeal not a supersedeas; reversal; effect.
- 48-645. Benefits; waiver, release, and deductions void; discrimination in hire or tenure unlawful; penalty.
- 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.
- 48-648. Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.
- 48-648.01. Repealed. Laws 2017, LB172, § 89.
- 48-648.02. Wages, defined.
- 48-649. Combined tax rate.
- 48-649.01. State unemployment insurance tax rate.
- 48-649.02. Employer's combined tax rate before benefits have been payable.
- 48-649.03. Employer's combined tax rate once benefits payable from experience account; experience factor.
- 48-649.04. State or political subdivision; combined tax; election to make payments in lieu of contributions.
- 48-650. Combined tax rate; determination of employment; notice; review; redetermination; proceedings; appeal.
- 48-651. Employer's account; benefit payments; notice; effect.
- 48-652. Employer's experience account; reimbursement account; combined tax; liability; termination; reinstatement.
- 48-653. Repealed. Laws 1949, c. 163, § 19.
- 48-654. Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.
- 48-654.01. Employer's experience account; transferable; when; violation; penalty.
- 48-655. Combined taxes; payments in lieu of contributions; collections; setoffs; interest; actions; setoff against federal income tax refund; procedure.
- 48-655.01. State; jurisdiction over employer; when.
- 48-655.02. Combined taxes; courts; jurisdiction; actions.
- 48-656. Combined taxes; report or return; requirements; assessment; notice; protest; penalty.
- 48-657. Combined tax or interest; default; lien; contracts for public works; requirements.
- 48-658. Combined tax; transfer of business; notice; succeeding employer's liability; action.
- 48-659. Combined tax and interest; legal distribution of employer's assets; priorities.

§ 48-601

LABOR

- Section
48-660. Combined tax or interest; adjustments; refunds.
48-660.01. Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; lien; liability.
48-661. Employer; election to become subject to Employment Security Law; written election to become or cease to be an employer; termination of coverage.
48-662. State employment service; establishment; functions; funds available; agreements authorized.
48-663. Benefits; prohibited acts by employee; penalty; limitation of time for prosecution.
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.
48-664. Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.
48-665. Benefits; erroneous payments; recovery; setoff against federal income tax refund; procedure.
48-665.01. Benefits; unlawful payments from foreign state or government; recovery.
48-666. Violations; general penalty.
48-667. Commissioner of Labor; civil and criminal actions; representation.
48-668. Unemployment compensation; services performed in another state; arrangements with other states.
48-668.01. Unemployment compensation; services performed in another state; arrangements with other states; alter.
48-668.02. Unemployment compensation; services performed in another state; reimbursements to and from other states.
48-668.03. Unemployment compensation; services performed in foreign country; facilities and services; utilize.
48-669. Repealed. Laws 2017, LB172, § 89.
48-670. Federal law; adjudged unconstitutional, invalid, or stayed; effect.
48-671. City or village; levy a tax; when; limitation.
48-672. Short-time compensation program created.
48-673. Short-time compensation program; terms, defined.
48-674. Short-time compensation program; participation; application; form; contents.
48-675. Short-time compensation program; commissioner; decision; eligibility.
48-676. Short-time compensation program; plan; effective date; notice of approval; expiration; revocation; termination.
48-677. Short-time compensation program; plan; revocation; procedure; grounds; order.
48-678. Short-time compensation program; plan; modification; request; decision; employer; report.
48-679. Short-time compensation program; individual; eligibility.
48-680. Short-time compensation program; weekly benefit amount; provisions applicable to individuals.
48-681. Short-time compensation; charged to employer's experience account.
48-682. Short-time compensation; when considered exhaustee.
48-683. Short-time compensation program; department; funding; report.

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.

Appeals to the Supreme Court under the provisions of the Employment Security Law are reviewed de novo on the record. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *Northern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).

The state, by its Legislature, has extensively entered the field of labor. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

A compensable claim for benefits under the unemployment compensation act must have some relation to, or connection with, the employment which employee has lost. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

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, LB 265, § 4; Laws 2007, LB 296, § 216; Laws 2010, LB 579, § 20; Laws 2010, LB 1020, § 2; Laws 2015, LB 271, § 1; Laws 2017, LB 172, § 5.

Based upon the plain and ordinary meaning of the first definition contained in subsection (27) of this section, two elements must be satisfied to demonstrate unemployment: First, the individual must not perform any services for the relevant time period; and second, no wages may be payable with respect to that time period. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

In determining whether wages are payable with respect to a time period, within the meaning of subsection (27) of this section, the test is not in what week the remuneration is received but in what week it is earned or to which it may reasonably be considered to apply. Generally speaking, wages are tied to the week of work and not to the week in which they are paid. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

Vacation pay, within the meaning of subsection (18) of this section, is generally regarded, not as a gratuity or gift, but as additional wages for services performed. It is not in the nature of compensation for the calendar days it covers — it is more like a contracted-for bonus for a whole year's work. A "vacation" is also understood to be a respite from active duty, during which activity or work is suspended, purposed for rest, relaxation, and personal pursuits. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).

Under former law, wages may include noncash benefits under certain circumstances. In-kind benefits received in return for

services provided may constitute wages for purposes of determining eligibility for unemployment compensation benefits. *Lecuona v. McCord*, 270 Neb. 213, 699 N.W.2d 403 (2005).

As a requisite matter, for an entity to be denominated an employee leasing company under subsection (11) of this section, it must be in the business of leasing employees to another entity. *American Employers Group Inc. v. Department of Labor*, 260 Neb. 405, 617 N.W.2d 808 (2000).

Under the former law, pursuant to subsection (24) of this section, employees who agree to take their earned vacation at a specific period of time for the employer's convenience under the expectation that their employment will continue after that period are not unemployed for the purpose of receiving unemployment insurance benefits. *Vlasic Foods International v. Lecuona*, 260 Neb. 397, 618 N.W.2d 403 (2000).

One performing services under a contract but not receiving wages, as defined by subsection (16) of this section, performs services under a contract of hire unless one is an independent contractor, as defined by the common law. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).

A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

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 reimburse-

ment 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, profession, 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 databases 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.

Services performed in the position of county attorney are excepted from the definition of employment, and thus, wages earned in that capacity are not for covered "employment" for purposes of unemployment insurance benefits. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

The position of county attorney is one that has been designated "a major nontenured policymaking or advisory position" under or pursuant to Nebraska law. *Lang v. Howard County*, 287 Neb. 66, 840 N.W.2d 876 (2013).

Since subsection (5) of this section refers only to services performed for wages, the ABC test embodied therein does not apply in determining whether one engages in employment under a contract of hire. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).

For the purpose of determining unemployment tax liability, the common-law definition of independent contractor is superseded by the definition found in this section. *Commissioner of Labor v. Lyric Co.*, 224 Neb. 190, 397 N.W.2d 32 (1986).

Individuals who provide services for welfare recipients at the request of the Nebraska Department of Public Welfare, now Department of Social Services, pursuant to 42 U.S.C. 1397 (1982) are independent contractors and not employees of the Department of Public Welfare within the meaning of this section. *State v. Saville*, 219 Neb. 81, 361 N.W.2d 215 (1985).

Where school has certified to an employer that work-study is an integral part of its educational program, the employer should be allowed to rely on that assurance, particularly when such conclusion is adequately supported by the record. The exemption from the term "employment" in section 48-604(6)(o) includes participation in a voluntary work-study program as long as grades and credits received are applied toward high school degree and it is part of an approved course of study. Exclusion of section 48-604(6)(o) is intended to encourage employers to participate in cooperative educational plans. *Seldin Development & Management Co. v. Chizek*, 208 Neb. 315, 303 N.W.2d 300 (1981).

Where orchestra leader was engaged by hotel for specific services at a fixed price, hired his own employees and paid and controlled them in the performance of their duties without interference, leader was an independent contractor and hotel was not liable for unemployment compensation for member of orchestra. *Hill Hotel Co. v. Kinney*, 138 Neb. 760, 295 N.W. 397 (1940).

The term "places of business" in subsection (5)(b) of this section includes the jobsites and the office of a construction company. *Bay Constr. Co. v. Dolan*, 2 Neb. App. 739, 513 N.W.2d 555 (1994).

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.

48-607 Rules and regulations; adoption; procedure.

The commissioner shall adopt and promulgate rules and regulations necessary to carry out the Employment Security Law pursuant to the Administrative Procedure Act. This section shall not be construed to invalidate any rules or regulations in effect on September 6, 1985.

Source: Laws 1937, c. 108, § 11, p. 390; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-607; Laws 1985, LB 339, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

48-608 Commissioner; distribution; duty.

The Commissioner of Labor shall furnish eight copies of the text of the Employment Security Law and his or her rules and regulations to the Nebraska Publications Clearinghouse.

Source: Laws 1937, c. 108, § 11, p. 391; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-608; Laws 1972, LB 1284, § 16; Laws 1981, LB 545, § 10; Laws 1985, LB 339, § 9; Laws 2001, LB 192, § 4.

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 stan-

dards 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.

48-610 Repealed. Laws 2009, LB 631, § 15.

48-611 Commissioner; general duties.

The Commissioner of Labor, with the advice and aid of advisory councils, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

Source: Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-611; Laws 1984, LB 747, § 4.

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.

Information provided to the Department of Labor in connection with the requirements of the Employment Security Law is privileged and cannot be the basis for a libel suit unless the information is both false and malicious. *Molt v. Lindsay Mfg. Co.*, 248 Neb. 81, 532 N.W.2d 11 (1995).

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.

48-615 Repealed. Laws 1987, LB 277, § 1.**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 Funds lost and improper expenditures; replacement; reimbursement.

This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of, any money received from the Secretary of Labor of the United States under Title III of the Social Security Act, any unencumbered balances in the Employment Security Administration Fund, any money granted to this state pursuant to the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the Wagner-Peyser Act, which the Secretary of Labor finds has, because of any action or contingency, been lost or has been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of the Employment Security Law. To the extent possible such money shall be promptly replaced by money appropriated for such purpose from the Employment Security Special Contingent Fund of this state to the Employment Security Administration Fund for expenditure as provided in section 48-621.

Source: Laws 1941, c. 94, § 10, p. 398; C.S.Supp., 1941, § 48-712; R.S. 1943, § 48-622; Laws 1949, c. 163, § 6, p. 423; Laws 1961, c. 238, § 4, p. 710; Laws 1985, LB 339, § 18.

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.

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.

The duration of maximum benefits is not affected by discharge for ordinary misconduct. Grand Island Baking Co. v. Frantz, 141 Neb. 803, 4 N.W.2d 921 (1942).

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.

Availability is required for eligibility to receive unemployment compensation benefits. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).

Without an order from the sentencing court granting the privilege to leave the jail for work, an inmate was not "available" for work under this section. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).

This section describes weekly requirements for continuing eligibility and does not address the reasons why a person became unemployed or threshold questions of eligibility. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

A lump-sum severance allowance paid to a claimant is not to be prorated to the calendar quarters immediately following the date of payment in order to determine whether the monetary eligibility requirements of subdivision (e) of this section have been met. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

The provision that a claimant earn a certain amount of wages during any benefit year and during each of two quarters thereof is intended to prevent a claimant from electing to simply collect unemployment benefits rather than work. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

Registration for work alone is not sufficient to show prima facie a right to benefits. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

For purposes of section 48-628(7), a student is not "registered for full attendance" and therefore disqualified from receiving unemployment benefits if the student's educational program allows him or her to remain "available for work" pursuant to subdivision (3) of this section. *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

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.

- 1. Eligibility for benefits
- 2. Voluntary termination of employment
- 3. Stoppage of work
- 4. Misconduct
- 5. Miscellaneous

1. Eligibility for benefits

In the circumstances of multiple employment, a decision to voluntarily leave part-time employment without good cause does not disqualify one from receiving full unemployment compensation benefits resulting from being laid off from one's full-time position. *Fountain v. Hanlon*, 214 Neb. 700, 335 N.W.2d 319 (1983).

When determining if an employee, discharged for violating a company rule forbidding company employees from having contact with prior employees, is to be disqualified from receiving benefits under this statute, it must be determined if the rule has a reasonable relationship to the employer's interest. Rule here held not to be so related to the employer's interest. *Snyder Industries, Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982).

The disqualification of employees of educational institutions and professional athletes for unemployment benefits under this provision does not include professional symphony musicians. The provisions of the unemployment compensation act should be liberally construed in favor of those claiming benefits under it. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

Pursuant to subsection (5)(b) of this section, receipt of workers' compensation temporary disability benefits disqualifies a person from receiving unemployment benefits unless the amount of workers' compensation benefits is less than the amount recoverable for unemployment. In that situation, the individual is entitled to the difference. *Hernandez v. JBS USA*, 20 Neb. App. 634, 828 N.W.2d 765 (2013).

For purposes of subdivision (7) of this section, a student is not "registered for full attendance" and therefore disqualified from receiving unemployment benefits if the student's educational program allows him or her to remain "available for work" pursuant to section 48-627(3). *Lecuona v. Cramer*, 14 Neb. App. 770, 714 N.W.2d 786 (2006).

2. Voluntary termination of employment

In the context of subsection (1)(a) of this section, to leave work voluntarily means to sever the employment relationship with the intent not to return to, or to intentionally terminate, the employment. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, a court will separately consider the circumstances under which each of multiple employments was terminated in determining the benefits against which the statutory disqualification shall apply. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, a paraeducator comes within the scope of this statutory provision. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

Pursuant to subsection (1)(a) of this section, an employee has "good cause" for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. *Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor*, 260 Neb. 108, 615 N.W.2d 441 (2000).

For purposes of subsection (a)(1) of this section, an employee has not "left work voluntarily without good cause" when the employee voluntarily resigns from work but is subsequently terminated by the employer during the notice period. *Dillard Dept. Stores v. Polinsky*, 247 Neb. 821, 530 N.W.2d 637 (1995).

An employee who has engaged in no misconduct and who desires to keep his or her employment, but nonetheless resigns because the employer has clearly manifested that the employment will be terminated, has not left his or her employment "voluntarily," as that term is used in subsection (a)(1) of this section. *Perkins v. Equal Opportunity Comm.*, 234 Neb. 359, 451 N.W.2d 91 (1990).

An employee has good cause for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. *Stackley v. State*, 222 Neb. 767, 386 N.W.2d 884 (1986).

A change in work hours, absent some compelling circumstance, does not constitute good cause for leaving employment under subsection (a)(1) of this section. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

Employee failed to meet burden of proof as to good cause of employment termination where employee failed to offer competent medical evidence to substantiate claim that her health would be affected by a change in work hours. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

An employer acts within the meaning of subsection (a) of this section by removing duties after a job change due to the physical incapacity to carry out those particular duties. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

To leave work voluntarily means to intentionally terminate the employment, but such leaving is with good cause if it has some justifiably reasonable connection with or relation to the conditions of employment. *McClemens v. United Parcel Serv.*, 218 Neb. 689, 358 N.W.2d 748 (1984).

The burden of proof is on the employee to show that he involuntarily left his employment or did so with good cause. *Taylor v. Collateral Control Corp.*, 218 Neb. 432, 355 N.W.2d 788 (1984).

One is disqualified for benefits if, by leaving work voluntarily and without good cause, one thereby makes oneself unemployed. Each job and the facts of its termination must be

considered separately with regard to disqualification for benefits. *Gilbert v. Hanlon*, 214 Neb. 676, 335 N.W.2d 548 (1983).

Evidence held to show that claimant left work voluntarily. To leave work voluntarily under this section means to intentionally sever the employment relationship with the intent not to return to, or to intentionally terminate, the employment. *Gastineau v. Tomahawk Oil Co., Limited*, 211 Neb. 537, 319 N.W.2d 107 (1982).

An employee who desires to retain his employment but resigns because the employer has clearly indicated that if he does not resign his employment will be terminated has not left his employment voluntarily. *School Dist. No. 20 v. Commissioner of Labor*, 208 Neb. 663, 305 N.W.2d 367 (1981).

A wife who voluntarily leaves her employment for the sole and only reason of being with her husband in another city does so without good cause and disqualifies herself as a claimant for unemployment benefits. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

An employee who leaves work voluntarily has the burden to prove that he or she left employment with good cause. *Speedway Motors v. Commissioner of Labor*, 1 Neb. App. 606, 510 N.W.2d 341 (1993).

3. Stoppage of work

A work stoppage cannot be determined solely on the basis of the proportionate number of employees affected. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).

Depending on the facts of the case, various factors become relevant as to the determination of a work stoppage within the meaning of subsection (d) of this section. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).

One disqualified from receiving benefits under subdivision (d) of this section can avoid continued disqualification if the employer fails to prove that for the week in question, the cause of work stoppage is the labor dispute. *IBP, Inc. v. Aanenson*, 234 Neb. 603, 452 N.W.2d 59 (1990).

No work stoppage occurred where workers' refusing to cross a picket line resulted in a four and nine-tenths percent loss in production, together with a two and nine-tenths percent loss of total work hours; there was no total operational shutdown at the plant; ninety-eight percent of the affected positions were filled by the end of the first week following the establishment of the picket line; and the company informed the Department of Labor that no work stoppage had occurred. *George A. Hormel & Co. v. Hair*, 229 Neb. 284, 426 N.W.2d 281 (1988).

One who is a member of the same grade or class of workers participating in a labor dispute is ineligible for unemployment compensation benefits. *Laursen v. Kiewit Constr. Co.*, 223 Neb. 471, 390 N.W.2d 534 (1986).

Members of nonstriking unions and nonunion employees who are not participating in or financing or directly interested in a labor dispute which caused a work stoppage and who do not belong to a grade or class of workers who, immediately before the commencement of the stoppage, were members employed at the premises at which the stoppage occurs, and are participating in, financing, or directly interested in the labor dispute, are not disqualified from receiving benefits. An employee is not directly interested in a labor dispute within the meaning of this provision merely because the employee may obtain a benefit by reason of the labor dispute. *Gilmore Constr. Co. v. Miller*, 213 Neb. 133, 327 N.W.2d 628 (1982).

Disqualification for benefits exists when unemployment is due to stoppage of work because of a labor dispute. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

Where a labor dispute develops into a strike, causing a substantial stoppage of work in the business of the employer, the employees striking are not entitled to benefits under the Unemployment Compensation Act. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).

The term stoppage of work, as used in Unemployment Compensation Act, means a substantial curtailment of work in an

employing establishment. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

4. Misconduct

An employee's actions do not rise to the level of misconduct if the individual is merely unable to perform the duties of the job. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

Under subsection (2) of this section, an individual shall be disqualified for unemployment benefits for misconduct related to his work. *Meyers v. Nebraska State Penitentiary*, 280 Neb. 958, 791 N.W.2d 607 (2010).

The degree of damage caused should not be a determining factor in whether an employee engaged in misconduct under subsection (2) of this section. Instead, the focus should be on the employee's culpability as demonstrated by his or her conduct and intentions. *NEBCO, Inc. v. Murphy*, 280 Neb. 145, 784 N.W.2d 447 (2010).

Misconduct has been defined, pursuant to this section, as behavior evidencing (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Douglas Cty. Sch. Dist. 001 v. Dutcher*, 254 Neb. 317, 576 N.W.2d 469 (1998).

In order for a violation of an employer's rule to constitute misconduct, the rule must bear a reasonable relationship to the employer's interests. *Dolan v. Svitak*, 247 Neb. 410, 527 N.W.2d 621 (1995).

Under subsection (b) of this section, conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

An employee who is discharged for misconduct may be disqualified from unemployment compensation benefits. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).

The term "misconduct," as used in subsection (b) of this section, includes behavior that evidences wanton and willful disregard of the employer's interests; deliberate violations of rules; disregard of standards of behavior rightfully expected from the employee; or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Where an employee has close personal contact with persons served by the employer, it is not unreasonable for the employer to require the employee to report to work without the odor of alcohol on his breath. Violation of the requirement, after warnings to the employee, is misconduct under subsection (b) of the statute. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Misconduct for which a disqualification from receiving unemployment benefits under subsection (b) of this section may result must be committed in connection with the employee's work. Failure to cooperate with an employer which is attempting to furnish a smoke-free environment by a good faith trial and error method constitutes misconduct in connection with the employee's work sufficient to disqualify the employee from receiving unemployment compensation benefits. Failure to furnish medical justification for prolonged absences from employment, when an employee has stated that such justification will be furnished, also constitutes sufficient misconduct in connection with the employee's work. *Tuma v. Omaha Public Power Dist.*, 226 Neb. 19, 409 N.W.2d 306 (1987).

Misconduct for which a disqualification from receiving unemployment benefits may result must be committed in connection with the employee's work. Conduct of an employee in so acting as to create a situation where garnishments are filed with his or her employer is not "misconduct connected with his or her work" and therefore will not disqualify a discharged employee from receiving unemployment compensation benefits. *Great Plains Container Co. v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987).

While absences due to illness may not constitute an employee's misconduct, an employee's chronic and excessive absenteeism demonstrates a wanton and willful disregard of the employer's interests for the purpose of this section. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).

Misconduct under subsection (b) of this section is defined as behavior which evidences (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

The falsifying of entries by an employee of his employer's work records constitutes misconduct. What constitutes misconduct is a fact question. In order for a violation of an employer's rules to constitute misconduct, it is necessary that the rule be a reasonable one. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).

Misconduct within the meaning of this statute is a deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Barada v. Sorensen*, 222 Neb. 391, 383 N.W.2d 799 (1986).

Excessive absences from work, except when excused or authorized by employment rules, may constitute misconduct. *McCorison v. City of Lincoln*, 215 Neb. 474, 339 N.W.2d 294 (1983).

Misconduct, under this section, is the deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981).

5. Miscellaneous

The language of subsection (5)(b) of this section in its current form does not include temporary total disability as a disqualifying event for the receipt of unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 251 Neb. 327, 557 N.W.2d 21 (1996).

In an appeal regarding disqualification under subsection (b) of this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Subsection (c) of this section disqualifies unemployed persons refusing suitable work from receiving benefits. This subsection does not apply to employed persons who reject demotions. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

The correct inquiry in cases where an employed person refuses a demotion and quits is whether the employee left with or without good cause. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

In an appeal regarding disqualification of benefits under this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).

The burden of proof under subsection (a)(1) of this section is upon the employee to show that he or she left his or her employment for good cause. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

The requirement of subdivision (e) of this section, that a lump-sum severance allowance be prorated, is intended to prevent a claimant from receiving double payments for the same period of time in the form of unemployment benefits and severance compensation. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

Subsection (c) of this section provides an employer with an additional reason for disqualification from benefits when a person refuses suitable work, and work is suitable when duties are excused upon the employee's showing of physical incapacity to perform the particular duties. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

Regular terms refers to definite period representing regular division of academic year and does not include six-week summer program. *School Dist. No. 21 v. Ochoa*, 216 Neb. 191, 342 N.W.2d 665 (1984).

"Good cause" as used herein does not include a mere disappointment at not being assigned to a particular job or task. *Heimsoth v. Kellwood Co.*, 211 Neb. 167, 318 N.W.2d 1 (1982).

Up to the point of appeal to district court, interpretation and application of law to facts in each case is made by administrative agency. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

The receipt of workers' compensation benefits for temporary total disability is not a disqualifying event for unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 4 Neb. App. 716, 548 N.W.2d 361 (1996).

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;

(11) An individual has made all reasonable efforts to preserve employment but voluntarily leaves employment for the purpose of caring for a family member with a serious health condition. For purposes of this subdivision:

(a) Family member means:

(i) A biological, adopted, or foster child, a stepchild, or a legal ward of the individual or the individual's spouse or a person to whom the individual or the individual's spouse stood in loco parentis when such person was a minor child, regardless of the age or dependency status of such child, stepchild, legal ward, or person;

(ii) A biological, adoptive, or foster parent, a stepparent, or a legal guardian of the individual or the individual's spouse or a person who stood in loco

parentis to the individual or the individual's spouse when the individual or the individual's spouse was a minor child;

(iii) The individual's spouse; or

(iv) A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of the individual or the individual's spouse; and

(b) Serious health condition has the same meaning as in 29 U.S.C. 2611, as such section existed on January 1, 2021; or

(12) 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; Laws 2021, LB260, § 1.
Effective date August 28, 2021.

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.

Claims for benefits were filed under this section. A. Borchman
Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

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 Compen-

sation 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.

Deputy commissioner of labor is agent who is required initially to make determination of case. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

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.

Before appeal tribunal of Labor Department may take jurisdiction over appeal filed beyond limitation date for newly discovered evidence, appellant must demonstrate new evidence

would make a valid claim or defense. *Nicholson v. City of Bellevue*, 215 Neb. 540, 339 N.W.2d 758 (1983).

A notice of appeal filed pursuant to this section, which is properly addressed and to which sufficient postage has been affixed, shall be valid if it is deposited in the United States mail

within ten days after the mailing of the notice of the deputy's determination. *Parson v. Chizek*, 201 Neb. 754, 272 N.W.2d 48 (1978).

Administrative appeal within division is provided. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

48-635 Administrative appeal; 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 appeal; decision; 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.

A determination made pursuant to the Employment Security Law is conclusive only for the purpose of proceedings governed by the Employment Security Law. *Ballard v. Giltner Pub. Sch.*, 241 Neb. 970, 492 N.W.2d 855 (1992).

Denial of unemployment compensation benefits on ground of employee misconduct was not res judicata precluding employee's action for breach of employment contract. A determination made pursuant to Employment Security Law is conclusive only for purpose of proceedings governed by Employment Security

Law. Ballard v. Giltner Public Schools, School District No. 2, Hamilton County, 241 Neb. 970, 492 N.W.2d 855 (1992).

Administrative law judge's decision reversing finding at initial unemployment determination that employees were guilty of willful intentional misconduct was not entitled to res judicata effect in employees' subsequent action against their employer challenging their discharge. *White v. Ardan, Inc.*, 230 Neb. 11, 430 N.W.2d 27 (1988).

48-637 Administrative appeal; decision; effect in subsequent proceeding; certification of question.

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.

Provision is made for appeal to district court from determination of appeal tribunal. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

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.

In an appeal to the district court under this section by the Commissioner of Labor the filing of the transcript required by the statute is not jurisdictional. The transcript filing requirement in this section is distinguishable from that in an error proceeding because it applies only to the commissioner, review in the district court is de novo, and the statute permits the introduction of additional evidence in the review proceeding. *Sorensen v. Bernhardt*, 223 Neb. 395, 389 N.W.2d 583 (1986).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *Northern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).

Appeal from decision of appeal tribunal is provided. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

The Commissioner of Labor is an interested party in any action under the provisions of the Unemployment Compensation Act, and may appeal when he feels himself aggrieved. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 12, 2 N.W.2d 353 (1942).

An employee who has established rights to benefits under the Unemployment Compensation Act is a necessary party for a review of the decision on appeal. *Brown v. Haith*, 140 Neb. 717, 1 N.W.2d 825 (1942).

48-639 Repealed. Laws 1988, LB 352, § 190.

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.

Generally, where there has been an award of benefits, the employee is not to be left without those benefits during appeal. *Gibson v. Kurt Mfg.*, 255 Neb. 255, 583 N.W.2d 767 (1998).

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, LB 631, § 5; Laws 2015, LB 271, § 6; Laws 2017, LB 172, § 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, LB 172, § 62; Laws 2019, LB 428, § 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.

Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S. 1943, and reimbursement financing under section 48-660.01, R.R.S.1943, are separate and distinct systems, and a nonprofit

organization must elect to use one or the other. West Nebraska General Hospital v. Hanlon, 208 Neb. 173, 302 N.W.2d 694 (1981).

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

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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.

A petition for judicial review of the Nebraska Commissioner of Labor's determination of an employer's unemployment insurance contributions must be filed in the county where the first adjudicated hearing of a disputed claim took place. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).

The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *North-*

ern Messenger v. Sorensen, 218 Neb. 846, 359 N.W.2d 787 (1984).

Judicial review of decision of the Nebraska Appeal Tribunal reviewing a decision under this section of the Nebraska Department of Labor, Division of Employment, may only be had in the District Court of Lancaster County. *Whitehouse Energy Savers v. Hanlon*, 214 Neb. 572, 334 N.W.2d 802 (1983).

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 prescribe, 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), (5), or (11) 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, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6; Laws 2012, LB1058, § 7; Laws 2017, LB172, § 70; Laws 2017, LB519, § 1; Laws 2019, LB359, § 6; Laws 2021, LB260, § 2.

Effective date August 28, 2021.

Where employees have left work voluntarily without good cause or have been discharged for misconduct, an employer is not charged with benefits paid to its employees. *Fauss v. Messerly*, 200 Neb. 326, 263 N.W.2d 668 (1978).

48-653 Repealed. Laws 1949, c. 163, § 19.

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.

This section, which allows an acquiring organization to assume the position of its predecessor with respect to the latter's experience account, is referring to the contribution rate of that employer. The experience account balance is used to determine the rate at which the employer must contribute, and it is not a cash account which may be treated as a liquid asset. *West Nebraska General Hospital v. Hanlon*, 208 Neb. 173, 302 N.W.2d 694 (1981).

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 substantial 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, LB 631, § 10; Laws 2012, LB 1058, § 8; Laws 2017, LB 172, § 73.

48-655.01 State; jurisdiction over employer; when.

Employing one or more individuals to perform service within this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such employer in any action under sections 48-655 to 48-655.02.

Source: Laws 1949, c. 163, § 14(2), p. 430; Laws 1957, c. 208, § 6, p. 734; Laws 1983, LB 447, § 71.

48-655.02 Combined taxes; courts; jurisdiction; actions.

The courts of this state shall in the manner provided in sections 48-655 to 48-655.02 entertain actions to collect combined taxes or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

Source: Laws 1949, c. 163, § 14(3), p. 430; Laws 1994, LB 1337, § 13.

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.

48-657 Combined tax or interest; default; lien; contracts for public works; requirements.

(1)(a) If any employer defaults in any payment of combined tax or interest, the commissioner may make in any manner feasible and cause to be filed as a secured transaction as provided in article 9, Uniform Commercial Code, and in the real estate mortgage records of any county in which such employer is engaged in business or owns real or personal property, a statement, under oath, showing the amount of combined tax and interest in default, which statement, when filed for record, shall operate as a lien and mortgage on all of the real and personal property of the employer, subject only to the liens of prior record, and the property of such employer shall be subject to seizure and sale for the payment of such combined taxes and interest. Such lien on personal property may be enforced or dissolved in the manner provided by article 9, Uniform Commercial Code, and such liens on real estate may be enforced or dissolved in the manner provided by Chapter 25, article 21, in the enforcing and dissolving of real estate mortgages. This subdivision shall only apply to liens filed prior to May 1, 1999.

(b) A lien for unpaid combined taxes filed or recorded pursuant to subdivision (a) of this subsection shall lapse at the earlier of its expiration date or the fifth anniversary of the filing or recording date, unless the commissioner files a notice of continuation in the place of the original filing or recording and with the appropriate filing officer in the manner provided for in the Uniform State Tax Lien Registration and Enforcement Act before such lien lapses. A notice of continuation shall include all of the information required by the act, the date of the filing or recording of the original lien, and a statement that the original lien is to be continued for ten years. Thereafter, such lien shall be enforced and notices of continuation filed in accordance with the act.

(c) On and after May 1, 1999, if any employer defaults in any payment of combined tax or interest, the commissioner may file a lien against such

employer in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of combined tax and interest in default and shall be continued and enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(2) It shall be the duty of the State of Nebraska, or any department or agency thereof, county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract by public bidding for the erecting and finishing or the repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract to provide in such contract that the person, persons, firm, or corporation to whom the contract is awarded will pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of such contract.

(3) No contract referred to in subsection (2) of this section shall be entered into by the State of Nebraska, a department or agency thereof, an officer or officers, or a board referred to in such subsection unless the contract contains the proviso mentioned in such subsection.

(4) Before final payment may be made on the final three percent of any such contract awarded on or after June 1, 1957, the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract must have received from the contractor a written clearance from the commissioner certifying that all payments then due of combined tax or interest which may have arisen under such contract have been made by the contractor or his or her subcontractor to the Unemployment Compensation Fund.

(5) The final three percent of any such contract referred to in subsection (4) of this section may be paid if the contractor has supplied a bond with a satisfactory surety company guaranteeing full payment to the Unemployment Compensation Fund and the State Unemployment Insurance Trust Fund of all combined tax and interest due under the Employment Security Law.

Source: Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 250; C.S.Supp., 1941, § 48-713; R.S. 1943, § 48-657; Laws 1957, c. 208, § 8, p. 735; Laws 1969, c. 404, § 1, p. 1401; Laws 1969, c. 405, § 1, p. 1403; Laws 1985, LB 339, § 39; Laws 1993, LB 604, § 1; Laws 1994, LB 1337, § 15; Laws 1999, LB 165, § 1; Laws 1999, LB 550, § 10; Laws 2001, LB 192, § 13.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

Statutory lien for unemployment taxes, even though recorded, was subject to lien for federal income taxes. *In re Kobiela*, 152 F.Supp. 489 (D. Neb. 1957).

48-658 Combined tax; transfer of business; notice; succeeding employer's liability; action.

Any person, group of individuals, partnership, limited liability company, corporation, or employer which acquires the organization, trade, or business or substantially all the assets thereof of an employer shall notify the commissioner thereof in writing by registered or certified mail not later than five days prior to the acquisition. Unless such notice is given such acquisition shall be void as

against the commissioner if, at the time of the acquisition, any combined tax is due and unpaid by the previous employer. The commissioner shall have the right to proceed against such person, group of individuals, partnership, limited liability company, corporation, or employer and the assets so acquired.

Source: Laws 1939, c. 56, § 11, p. 250; C.S.Supp.,1941, § 48-713; R.S. 1943, § 48-658; Laws 1957, c. 208, § 9, p. 737; Laws 1993, LB 121, § 293; Laws 1994, LB 1337, § 16.

48-659 Combined tax and interest; legal distribution of employer's assets; priorities.

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including dissolution, reorganization, administration of estates of decedents, receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, any claims for combined tax and interest thereon due or accrued under the Employment Security Law which have not been reduced to a lien in accordance with section 48-657 shall receive the priority of a tax.

Source: Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 251; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-659; Laws 1953, c. 167, § 10, p. 536; Laws 1985, LB 339, § 40; Laws 1994, LB 1337, § 17.

48-660 Combined tax or interest; adjustments; refunds.

If more than the correct amounts of combined tax or interest are collected, then, under rules and regulations made under section 48-607, proper adjustments with respect thereto shall be made, without interest, in connection with subsequent combined tax. If such adjustment cannot be made within a reasonable time, the commissioner shall refund the excess from the appropriate fund. Applications for adjustments or refunds shall be made within four years after the date of such overcollection.

Source: Laws 1937, c. 108, § 14, p. 399; Laws 1939, c. 56, § 11, p. 251; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-660; Laws 1945, c. 115, § 7, p. 386; Laws 1985, LB 339, § 41; Laws 1994, LB 1337, § 18.

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.

Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S. 1943, and reimbursement financing under section 48-660.01, R.R.S.1943, are separate and distinct systems, and a nonprofit

organization must elect to use one or the other. *West Nebraska General Hospital v. Hanlon*, 208 Neb. 173, 302 N.W.2d 694 (1981).

48-661 Employer; election to become subject to Employment Security Law; written election to become or cease to be an employer; termination of coverage.

(1) Except as otherwise provided in subsections (2) and (3) of this section, any employer not otherwise subject to the Employment Security Law, who is or becomes an employer subject to such law within any calendar year, shall be subject to such law during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section, an employer, other than an employer subject by reason of subdivision (4)(a) of section 48-604, shall cease to be an employer subject to the Employment Security Law only as of January 1 of any calendar year, if he or she files with the commissioner, on or before January 31 of such year, a written application for termination of coverage, and the commissioner finds: (a) That there were no twenty different days, each day being in a different calendar week, within the preceding calendar year within which such employer employed one or more individuals in employment subject to such law and there was no calendar

quarter within the preceding calendar year in which such employer paid wages for employment in the total sum of fifteen hundred dollars or more; (b) if the employer is subject by reason of subdivision (9) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed four or more individuals in employment subject to that section; (c) if the employer is subject by reason of subdivision (10) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed ten or more individuals in employment subject to that section and there was no calendar quarter within the preceding calendar year in which such employer paid remuneration in cash for employment subject to that section in the total sum of twenty thousand dollars or more; or (d) if the employer is subject by reason of subdivision (11) of section 48-603 there was no calendar quarter within the preceding calendar year in which such employer paid cash remuneration in the total sum of one thousand dollars or more for services in employment subject to that section. The commissioner may on his or her motion terminate the coverage of any employer who has not made such written request, but is otherwise eligible to terminate. Any employer whose entire experience account has been transferred to another employer under section 48-654 may request termination as of the date of such transfer if such request is made within thirty days after the determination is made allowing the transfer.

(3) An employer not otherwise subject to the Employment Security Law, who files with the commissioner his or her written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject thereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject thereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year, he or she has filed with the commissioner a written notice to that effect. Any employer of any person in this state for whom services that do not constitute employment as defined in section 48-604 are performed, may file with the commissioner a written election that all such services performed by individuals in his or her employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of the Employment Security Law for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to such law from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year such employer has filed with the commissioner a written notice to that effect.

Source: Laws 1937, c. 108, § 8, p. 386; Laws 1939, c. 56, § 6, p. 243; Laws 1941, c. 94, § 6, p. 394; C.S.Supp., 1941, § 48-708; R.S. 1943, § 48-661; Laws 1953, c. 167, § 11, p. 537; Laws 1955, c. 190, § 10, p. 549; Laws 1963, c. 293, § 1, p. 878; Laws 1967, c. 302, § 1, p. 821; Laws 1971, LB 651, § 12; Laws 1973, LB 35, § 1; Laws 1977, LB 509, § 9; Laws 1985, LB 339, § 43; Laws 1995, LB 1, § 14.

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 department 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 occurs, 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.

The time limitations provided for in sections 25-206 and 25-218 do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under this section. McCoy v. Albin, 298 Neb. 297, 903 N.W.2d 902 (2017).

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.

48-666 Violations; general penalty.

Any person who shall willfully violate any provision of the Employment Security Law or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of such law, and for which a penalty is neither prescribed in such law nor provided by any other applicable statute, shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

Source: Laws 1937, c. 108, § 16, p. 401; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-666; Laws 1977, LB 40, § 296; Laws 1985, LB 339, § 47.

48-667 Commissioner of Labor; civil and criminal actions; representation.

(1) In any civil action to enforce the Employment Security Law, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

(2) All criminal actions for violation of any provision of the Employment Security Law or of any rules or regulations issued pursuant thereto shall be prosecuted by the county attorney of any county in which the violation, or a part thereof, occurred.

Source: Laws 1937, c. 108, § 17, p. 402; C.S.Supp.,1941, § 48-716; R.S.1943, § 48-667; Laws 1953, c. 167, § 15, p. 540; Laws 1985, LB 339, § 48.

48-668 Unemployment compensation; services performed in another state; arrangements with other states.

(1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which (i) any part of such individual's service is performed, (ii) such individual has his or her residence, or (iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

(b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

(c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the Employment Security Law. Reimbursements paid from the fund pursuant to

this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

(d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws and (b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp., 1941, § 48-717; R.S. 1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(1), p. 432; Laws 1971, LB 651, § 13; Laws 1985, LB 339, § 49; Laws 2009, LB631, § 12.

48-668.01 Unemployment compensation; services performed in another state; arrangements with other states; alter.

If after entering into an arrangement provided by sections 48-668 to 48-668.03 the commissioner finds that the employment security law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to

whether such arrangement shall be continued with such state or with the federal government.

Source: Laws 1949, c. 163, § 17(2), p. 434.

48-668.02 Unemployment compensation; services performed in another state; reimbursements to and from other states.

Reimbursements paid from the fund pursuant to subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(3), p. 434; Laws 1985, LB 339, § 50; Laws 2009, LB631, § 13.

48-668.03 Unemployment compensation; services performed in foreign country; facilities and services; utilize.

To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the Employment Security Law and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the unemployment insurance law of this state or under a similar law of such government.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(4), p. 434; Laws 1985, LB 339, § 51.

48-669 Repealed. Laws 2017, LB172, § 89.

48-670 Federal law; adjudged unconstitutional, invalid, or stayed; effect.

If Public Law 94-566 or the federal acts it amends is adjudged unconstitutional or invalid in its application or stayed pendente lite by any court of competent jurisdiction, then the coverage under the Employment Security Law of those employees of any political subdivision is automatically stayed or repealed.

Source: Laws 1977, LB 509, § 10; Laws 1985, LB 339, § 52.

48-671 City or village; levy a tax; when; limitation.

Any city or village of the state which makes any contributions or payments required to be made by the Employment Security Law shall levy a tax in order to defray the cost to such city or village in meeting the obligations arising by reason of such law. Such tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by such city. The revenue so raised shall be limited to the amount needed to defray the cost to such city or

village in meeting the obligations arising by reason of the Employment Security Law and shall be used for no other purpose.

Source: Laws 1977, LB 509, § 11; Laws 1985, LB 339, § 53.

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	
48-701.	Transferred to section 48-721.
48-702.	Transferred to section 48-722.
48-703.	Transferred to section 48-723.
48-704.	Transferred to section 48-724.
48-705.	Transferred to section 48-725.
48-706.	Transferred to section 48-726.
48-707.	Transferred to section 48-727.
48-708.	Transferred to section 48-728.
48-709.	Transferred to section 48-729.
48-710.	Transferred to section 48-730.
48-711.	Repealed. Laws 1961, c. 284, § 1.
48-712.	Transferred to section 48-731.
48-713.	Transferred to section 48-732.
48-714.	Transferred to section 48-733.
48-714.01.	Repealed. Laws 1987, LB 462, § 21.
48-714.02.	Transferred to section 48-734.
48-715.	Transferred to section 48-735.
48-716.	Transferred to section 48-736.
48-717.	Transferred to section 48-737.
48-718.	Transferred to section 48-738.
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.
48-734.	Repealed. Laws 1995, LB 438, § 17.
48-735.	Repealed. Laws 1995, LB 438, § 17.
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.

48-701 Transferred to section 48-721.

48-702 Transferred to section 48-722.

48-703 Transferred to section 48-723.

48-704 Transferred to section 48-724.

48-705 Transferred to section 48-725.

48-706 Transferred to section 48-726.

48-707 Transferred to section 48-727.

48-708 Transferred to section 48-728.

48-709 Transferred to section 48-729.

48-710 Transferred to section 48-730.

48-711 Repealed. Laws 1961, c. 284, § 1.

48-712 Transferred to section 48-731.

48-713 Transferred to section 48-732.

48-714 Transferred to section 48-733.

48-714.01 Repealed. Laws 1987, LB 462, § 21.

48-714.02 Transferred to section 48-734.

48-715 Transferred to section 48-735.

48-716 Transferred to section 48-736.

48-717 Transferred to section 48-737.

48-718 Transferred to section 48-738.

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.
- 48-734 Repealed. Laws 1995, LB 438, § 17.
- 48-735 Repealed. Laws 1995, LB 438, § 17.
- 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

Cross References

Constitutional provisions:

Industrial Commission, controversies between employer and employee, see Article XV, section 9, Constitution of Nebraska.

State Employees Collective Bargaining Act, see section 81-1369.

Unified or reorganized school districts, collective-bargaining agreements, see section 79-852.

Section

- 48-801. Terms, defined.
- 48-801.01. Act, how cited.
- 48-802. Public policy.
- 48-803. Commission of Industrial Relations; created.
- 48-804. Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.
- 48-804.01. Presiding officer; clerk; personnel; appointment; duties.

COMMISSION OF INDUSTRIAL RELATIONS

- Section
- 48-804.02. Clerk, employees; salaries; approval by Governor; expenses.
 - 48-804.03. Clerk; bond or insurance; oath.
 - 48-805. Commissioners; qualifications.
 - 48-806. Commissioner; compensation; expenses.
 - 48-807. Commission; office; location; records.
 - 48-808. Reporter; duties.
 - 48-809. Commission; powers.
 - 48-810. Commission; jurisdiction.
 - 48-810.01. State or political subdivision; exempt from contract with labor organization.
 - 48-810.02. Repealed. Laws 1969, c. 407, § 8.
 - 48-811. Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.
 - 48-811.01. Docket fee; disposition.
 - 48-811.02. Repealed. Laws 2011, LB 397, § 35.
 - 48-812. Commission; proceedings; appeal.
 - 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.
 - 48-814. Commission; employees; compensation.
 - 48-815. Commission; seal; attendance of witnesses and parties; subpoena.
 - 48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.
 - 48-816.01. Hearing officer; appointment; when.
 - 48-816.02. Temporary relief; initial hearing; when held.
 - 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.
 - 48-819. Commission; orders; effect; contempt.
 - 48-819.01. Commission; power to make findings and enter orders; when.
 - 48-820. Repealed. Laws 1969, c. 407, § 8.
 - 48-821. Public service; interference; coercion; violation; penalty.
 - 48-822. Employees; no requirement to work without consent.
 - 48-823. Act; liberal construction; commission; powers.
 - 48-824. Labor negotiations; prohibited practices.
 - 48-825. Labor negotiations; prohibited practices; complaints; procedure.
 - 48-826. Repealed. Laws 1969, c. 407, § 8.
 - 48-827. Repealed. Laws 1969, c. 407, § 8.
 - 48-828. Repealed. Laws 1969, c. 407, § 8.
 - 48-829. Repealed. Laws 1969, c. 407, § 8.
 - 48-830. Repealed. Laws 1969, c. 407, § 8.
 - 48-831. Repealed. Laws 1969, c. 407, § 8.
 - 48-832. Repealed. Laws 1969, c. 407, § 8.
 - 48-833. Repealed. Laws 1969, c. 407, § 8.
 - 48-834. Repealed. Laws 1969, c. 407, § 8.
 - 48-835. Repealed. Laws 1969, c. 407, § 8.
 - 48-836. Repealed. Laws 1969, c. 407, § 8.
 - 48-837. Public employees; employee organization; bargaining.
 - 48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.
 - 48-839. Changes made by Laws 2011, LB397; applicability.
 - 48-840. Repealed. Laws 1987, LB 782, § 4.
 - 48-841. Repealed. Laws 1987, LB 782, § 4.
 - 48-842. State employees; jurisdiction of commission; restricted.

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.

- 1. Constitutionality
- 2. Jurisdiction of commission
- 3. Bargaining units
- 4. Miscellaneous

1. Constitutionality

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

To pass scrutiny of Constitution of the United States, Nebraska Court of Industrial Relations, in case within its jurisdiction, must be deemed to have sufficient power to fully vindicate, preserve, and protect a federal constitutional right. *Teamsters Pub. Emp. U. Loc. 594 v. City of West Point*, 338 F.Supp. 927 (D. Neb. 1972).

2. Jurisdiction of commission

A mere request by a union for information regarding employee transfer lists and test results which is declined by the employer does not constitute an industrial dispute. *Neb. Pub. Emp. v. City of Omaha*, 235 Neb. 768, 457 N.W.2d 429 (1990).

A uniquely personal termination of employment does not constitute an industrial dispute, notwithstanding the fact it may involve a controversy concerning terms, tenure, or conditions of employment. *Wood v. Tesch*, 222 Neb. 654, 386 N.W.2d 436 (1986).

The Commission of Industrial Relations has jurisdiction, that is, authorized power, to resolve industrial disputes between agencies or departments of the State of Nebraska and their employees. *State Code Agencies Ed. Assn. v. Department of Pub. Insts.*, 219 Neb. 555, 364 N.W.2d 44 (1985).

The authority of the Court of Industrial Relations, now Commission of Industrial Relations, is limited to industrial disputes, as defined in this section. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

The University of Nebraska has the primary authority for establishing its own schedule of wages, terms and conditions of employment, and hours of labor but when an industrial dispute, as defined in this section, arises, the Commission of Industrial Relations acquires jurisdiction for the limited purpose of resolving such dispute. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

3. Bargaining units

House officers of the University of Nebraska Medical Center are employees of the state entitled to participate in an appropriate bargaining unit. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain

the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

4. Miscellaneous

Employees lose the statutory protection of the Industrial Relations Act for conduct or speech if it is flagrant misconduct, which includes, but is not limited to, statements or actions that (1) are of an outrageous and insubordinate nature, (2) compromise the public employer's ability to accomplish its mission, or (3) disrupt discipline, as well as conduct that is clearly outside the bounds of any protection such as assault and battery or racial discrimination. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Public employees belonging to a labor organization have the protected right to engage in conduct and make remarks, including publishing statements through the media, concerning wages, hours, or terms and conditions of employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Commission of Industrial Relations must balance the employee's right to engage in protected activity, which permits some leeway for impulsive behavior, against the employer's right to maintain order and respect for its supervisory staff. Factors that the commission may consider, but would not necessarily be determinative, include: (1) the place and subject matter of the conduct or speech, (2) whether the employee's conduct or speech was impulsive or designed, (3) whether the conduct or speech was provoked by the employer's conduct, and (4) the nature of the intemperate language or conduct. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Industrial Relations Act is not only an attempt to level the employment playing field, but is also a mechanism designed to protect the citizens of Nebraska from the effects and consequences of labor strife in public sector employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

Teachers in Class III, IV, and VI school districts are subject to provisions of Teachers' Professional Negotiation Act. *Lincoln Ed. Assn. v. School Dist. of Lincoln*, 214 Neb. 895, 336 N.W.2d 587 (1983).

School districts are employers and teachers are employees within terms of this act. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

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.

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of section 48-825, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in this section. *Operating Engrs. Local 571 v. City of Plattsmouth*, 265 Neb. 817, 660 N.W.2d 480 (2003).

If public employees may not refuse to work without risk of discharge, public employers may not refuse to pay employees the wage established by the governmental employer for such work. *AFSCME Local No. 2088 v. County of Douglas*, 208 Neb. 511, 304 N.W.2d 368 (1981).

It is the public interest in having uninterrupted public service that is principally sought to be protected by the Commission of Industrial Relations Act, not the creation of a specialty forum

for the trying of breach of contract cases by public employees. *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

While there are many nebulous areas that may overlap working conditions, school boards should not be required to enter into negotiations which are predominately of educational policy, management prerogatives, or statutory duties of the board of education. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

48-803 Commission of Industrial Relations; created.

In order to carry out the public policy of the State of Nebraska as set forth in section 48-802, there is hereby created an industrial commission to be known as the Commission of Industrial Relations.

Source: Laws 1947, c. 178, § 3, p. 588; Laws 1979, LB 444, § 1.

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.

48-804.01 Presiding officer; clerk; personnel; appointment; duties.

The presiding officer of the commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding officer, keep a full and true record of the proceedings of the commission and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Source: Laws 1974, LB 819, § 3; Laws 2007, LB472, § 3.

48-804.02 Clerk, employees; salaries; approval by Governor; expenses.

The clerk and all other assistants and employees of the commission shall receive such salaries as the commission may with the approval of the Governor determine, but not to exceed the amount of the appropriation made for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees. The clerk and other assistants and employees of the

commission shall be entitled, while traveling on the business of the commission, to be reimbursed by the state for necessary traveling expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1974, LB 819, § 4; Laws 1981, LB 204, § 82.

48-804.03 Clerk; bond or insurance; oath.

The clerk of the Commission of Industrial Relations shall be bonded or insured as required by section 11-201 before entering upon or discharging any of the duties of his or her office. Such clerk shall, before entering upon the duties of his or her office, take and subscribe the statutory oath of office.

Source: Laws 1974, LB 819, § 5; Laws 1978, LB 653, § 13; Laws 2004, LB 884, § 24.

48-805 Commissioners; qualifications.

The commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

Source: Laws 1947, c. 178, § 5, p. 589; Laws 2007, LB472, § 4.

48-806 Commissioner; compensation; expenses.

As soon as the same may be legally paid under the Constitution of Nebraska, the compensation of each commissioner shall be four hundred seventy-five dollars per day for each day's time actually engaged in the performance of the duties of his or her office. Each commissioner shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

Source: Laws 1947, c. 178, § 6, p. 599; Laws 1971, LB 822, § 1; Laws 1976, LB 710, § 1; Laws 1977, LB 302, § 1; Laws 1979, LB 444, § 3; Laws 1981, LB 188, § 1; Laws 1981, LB 204, § 83; Laws 1991, LB 856, § 1; Laws 2007, LB211, § 1; Laws 2007, LB472, § 5.

48-807 Commission; office; location; records.

The Commission of Industrial Relations may have its office at the Capitol in the city of Lincoln or such other location as the commission may, with the approval of the Governor, determine. It shall keep a record of all of its proceedings, which shall be a public record and subject to inspection the same as other public records of this state.

Source: Laws 1947, c. 178, § 7, p. 589; Laws 1974, LB 819, § 2.

48-808 Reporter; duties.

The commission may also appoint a reporter to report and transcribe in duplicate all testimony given in hearings and trials before the commission and file such testimony with the commission. The commission shall certify and

transmit one copy to the Clerk of the Supreme Court in all cases in which there is an appeal under section 48-812.

Source: Laws 1947, c. 178, § 8, p. 589; Laws 1974, LB 819, § 6; Laws 1986, LB 809, § 3; Laws 1991, LB 732, § 115; Laws 1992, LB 360, § 27.

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.

Under powers granted in this section, Court of Industrial Relations may adopt rules required under the Administrative Procedures Act. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

48-810 Commission; jurisdiction.

Except as provided in the State Employees Collective Bargaining Act, industrial disputes involving governmental service, service of a public utility, or other disputes as the Legislature may provide shall be settled by invoking the jurisdiction of the Commission of Industrial Relations.

Source: Laws 1947, c. 178, § 10, p. 590; Laws 1965, c. 289, § 14, p. 829; Laws 1967, c. 305, § 1, p. 828; Laws 1969, c. 407, § 3, p. 1407; Laws 1987, LB 524, § 1; Laws 1987, LB 661, § 23.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

The statutory jurisdiction of the Commission of Industrial Relations is to settle pending controversies. *NAPE v. Game & Parks Comm.*, 220 Neb. 883, 374 N.W.2d 46 (1985).

The provisions of the Teachers' Professional Negotiation Act must be exhausted by covered teachers before the action can be taken before the Commission of Industrial Relations. *Lincoln Ed. Assn. v. School Dist. of Lincoln*, 214 Neb. 895, 336 N.W.2d 587 (1983).

A uniquely personal termination of office does not constitute an industrial dispute. *Nebraska Dept. of Roads Employees Assn. v. Department of Roads*, 189 Neb. 754, 205 N.W.2d 110 (1973).

Employees covered by the Teachers' Professional Negotiations Act must await exhaustion thereof before invoking jurisdiction of the Court of Industrial Relations, but this does not deny them

the right to invoke that jurisdiction. *Sidney Education Assn. v. School Dist. of Sidney*, 189 Neb. 540, 203 N.W.2d 762 (1973).

Labor organization organized under provisions of the act may file a petition with the Court of Industrial Relations when industrial dispute exists between parties as set forth in this section. *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

Judicial remedies given employee discharged for joining labor union inadequate. *American Federation of State, Co., & Mun. Emp. v. Woodward*, 406 F.2d 137 (8th Cir. 1969).

48-810.01 State or political subdivision; exempt from contract with labor organization.

Notwithstanding any other provision of law, the State of Nebraska and any political or governmental subdivision thereof cannot be compelled to enter into any contract or agreement, written or otherwise, with any labor organization concerning grievances, labor disputes, rates of pay, hours of employment or conditions of work.

Source: Laws 1967, c. 304, § 2, p. 827.

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A contract continuation clause is not a contract for a future contract year in violation of this section. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

If a school district refuses to recognize a teachers organization it cannot be compelled to do so, and the problems are then for solution by the Court of Industrial Relations. *Sidney Edu-*

cation Assn. v. School Dist. of Sidney, 189 Neb. 540, 203 N.W.2d 762 (1973).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

48-810.02 Repealed. Laws 1969, c. 407, § 8.

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.

The statutory words employment status mean that no employer may without cause change an employee's status as an employee under this section, pending disposition of the petition. *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

Prior to its amendment, this section did not give the Commission of Industrial Relations jurisdiction to generally find and declare what is known elsewhere in labor law as "unfair labor

practices". *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

Labor organization organized under provisions of the act may file a petition with the Court of Industrial Relations when industrial dispute exists between the parties as set forth in section 48-810, R.S.Supp.,1969. *Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College*, 189 Neb. 37, 199 N.W.2d 747 (1972).

48-811.01 Docket fee; disposition.

Any person who files a petition with the Commission of Industrial Relations pursuant to section 48-811 shall, at the time of such filing, pay a docket fee of one hundred dollars to the clerk of such commission. All fees so collected shall be deposited in the state treasury and by the State Treasurer credited to the General Fund.

Source: Laws 1983, LB 617, § 1.

48-811.02 Repealed. Laws 2011, LB 397, § 35.

48-812 Commission; proceedings; appeal.

Except as modified by the commission under section 48-809 or the other provisions of the Industrial Relations Act, proceedings before the commission shall conform to the code of civil procedure applicable to the district courts of the state and appeals from its final orders shall be taken in the same manner and time as appeals from the district court, except that an order determining a bargaining unit or units shall not be appealable until after the results of the election have been certified by the commission. Appeals shall be heard and disposed of in the appellate court in the manner provided by law.

Source: Laws 1947, c. 178, § 12, p. 590; Laws 1979, LB 444, § 4; Laws 1986, LB 809, § 4; Laws 1991, LB 732, § 116; Laws 1992, LB 360, § 28.

- 1. Right to appeal
- 2. Manner of consideration
- 3. Miscellaneous

1. Right to appeal

A party appealing from an order of the Commission of Industrial Relations is not required to file a motion for new trial before the commission as a prerequisite to an appeal to the Nebraska Supreme Court. Fraternal Order of Police v. County of Adams, 205 Neb. 682, 289 N.W.2d 535 (1980); Plattsmouth Police Dept. Collective Bargaining Committee v. City of Plattsmouth, 205 Neb. 567, 288 N.W.2d 729 (1980).

In the absence of a specific statute requiring it, the filing of a motion for new trial is not a prerequisite to the appeal of a decision of an administrative body. This section creates no such requirement for appeals from the Commission of Industrial Relations. Plattsmouth Pol. Dept. Collective Bargaining Committee v. City of Plattsmouth, 205 Neb. 567, 288 N.W.2d 729 (1980).

An order of the Court of Industrial Relations establishing bargaining units is a final order under this section, and becomes immediately appealable. American Assn. of University Professors v. Board of Regents, 198 Neb. 243, 253 N.W.2d 1 (1977).

2. Manner of consideration

In reviewing the findings and order of the Commission of Industrial Relations, the Supreme Court will only consider whether the order of the commission is supported by substantial evidence, whether the commission acted within the scope of its authority, and whether its action was arbitrary, capricious, or

unreasonable. Fraternal Order of Police v. County of Adams, 205 Neb. 682, 289 N.W.2d 535 (1980).

Review of collective bargaining decision by Court of Industrial Relations is in manner provided for disposition of equity cases. American Fed. S., C., & M. Emp., AFL-CIO v. County of Lancaster, 196 Neb. 89, 241 N.W.2d 523 (1976).

Appeals from the Court of Industrial Relations are to be heard and disposed of de novo, but the superior position of the original trier of fact is to be respected and accorded great weight. Crete Education Assn. v. School Dist. of Crete, 193 Neb. 245, 226 N.W.2d 752 (1975); Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College, 189 Neb. 37, 199 N.W.2d 747 (1972).

3. Miscellaneous

Adversary proceedings before the Commission of Industrial Relations must conform to the code of civil procedure applicable to district courts. IAFF Local 831 v. City of No. Platte, 215 Neb. 89, 337 N.W.2d 716 (1983).

An intervenor in a proceeding before the Commission of Industrial Relations may be required to make a reasonable showing of interest in support of the intervention. American Assn. of University Professors v. Board of Regents, 203 Neb. 628, 279 N.W.2d 621 (1979).

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 ratifica-

tion 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.

The Commission of Industrial Relations, as an administrative body, has only that authority specifically conferred upon it by statute or by construction necessary to achieve the purpose of the relevant act. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

Under the Industrial Relations Act, section 48-801 et seq., and the State Employees Collective Bargaining Act, section 81-1369 et seq., the Commission of Industrial Relations does not have the statutory authority to entertain or grant motions for sum-

mary judgment. *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 61 (1997).

A city attorney is not a "principal officer" within the meaning of that phrase in this section. *Communication Workers of America, AFL-CIO v. City of Hastings*, 198 Neb. 668, 254 N.W.2d 695 (1977).

The provision that a case shall be heard within sixty days and order entered thirty days thereafter is directory and not mandatory. *Local Union No. 647 v. City of Grand Island*, 196 Neb. 693, 244 N.W.2d 515 (1976).

48-814 Commission; employees; compensation.

The Commission of Industrial Relations may employ such expert accountants, engineers, stenographers, attorneys, and other employees as the commission finds necessary. Officers and employees of the commission, whose salaries are not fixed by law, shall be paid such compensation as may be fixed by the commission with the approval of the Governor.

Source: Laws 1947, c. 178, § 14, p. 591; Laws 1955, c. 78, § 2, p. 233; Laws 1974, LB 819, § 8.

48-815 Commission; seal; attendance of witnesses and parties; subpoena.

The commission shall provide itself with a proper seal and shall have the power and authority to issue subpoenas and to compel the attendance of witnesses and parties and to compel the production of relevant books, correspondence, files, records, and accounts of any person, corporation, association, or labor organization affected, and to make any and all investigations necessary to ascertain the truth in regard to the matters before the commission. Subpoenas for the production of books, correspondence, files, records and accounts shall be issued by the commission only after notice to the owner and person in possession thereof and opportunity to be heard as to the relevancy of such subpoena.

Source: Laws 1947, c. 178, § 15, p. 591; Laws 1974, LB 819, § 9.

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.

- 1. Commission authority
- 2. Collective bargaining units
- 3. Miscellaneous

1. Commission authority

Status quo orders issued by the Commission of Industrial Relations pursuant to subsection (1) of this section are limited to the pendency of the industrial dispute between the parties and are binding on the parties only until the dispute has been resolved. *Professional Firefighters Assn. v. City of Omaha*, 282 Neb. 200, 803 N.W.2d 17 (2011).

The Commission of Industrial Relations has the statutory authority to enter temporary orders concerning wages, hours, or terms and conditions of employment, pending the resolution of an industrial dispute. *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

The authority granted to the Commission of Industrial Relations under this section is limited in nature. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

Court of Industrial Relations does not have power to order collective bargaining by a public utility operated by government in a proprietary capacity. *International Brotherhood of Electrical Workers v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965).

2. Collective bargaining units

Deputy assessor, deputy clerk, and deputy treasurer are considered statutory supervisors due to authority granted to those positions by state law. *IBEW Local Union No. 1597 v. Sack*, 280 Neb. 858, 793 N.W.2d 147 (2010).

A deviation clause in a teacher contract falls under the category of "wages, hours, and other terms of employment, or any question arising thereunder," as stated in subsection (1) of this section, and is a subject of mandatory bargaining. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

Pursuant to subsection (3)(a) of this section, a single bargaining unit cannot include supervisors and those whom the supervisors responsibly direct. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

The enactment of subsection (3)(c) of this section, exempting certain Class V school district administrators from the operation of subsection (3)(a), does not evidence a legislative purpose or intent to permit like administrators in school districts of whatever class to do the same. *PLPSO v. Papillion/La Vista School Dist.*, 252 Neb. 308, 562 N.W.2d 335 (1997).

A community of interest is presumed among all police officers holding positions subordinate to the chief of the department and his or her immediate assistants. *City of Omaha v. Omaha Police Union Local 101*, 222 Neb. 197, 382 N.W.2d 613 (1986).

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. *Nebraska Assn. of Pub. Emp. v. Nebraska Game & Parks Commission*, 197 Neb. 178, 247 N.W.2d 449 (1976).

This section in classifying officers of municipal police and fire departments differently in regard to membership in bargaining units from officers in other departments is not thereby rendered unconstitutional as special legislation. *Local Union No. 647 v. City of Grand Island*, 196 Neb. 693, 244 N.W.2d 515 (1976).

The 1969 amendment authorizing public employers to recognize employee organizations and to negotiate collectively cannot be attacked as unconstitutional by city which invokes its provisions. *City of Grand Island v. American Federation of S. C. & M. Employees*, 186 Neb. 711, 185 N.W.2d 860 (1971).

3. Miscellaneous

Good faith bargaining includes the execution of a written contract incorporating the terms of an agreement reached pursuant to subsection (1) of this section. *Scottsbluff Police Off. Assn. v. City of Scottsbluff*, 282 Neb. 676, 805 N.W.2d 320 (2011).

Health insurance coverage and related benefits are mandatory subjects of bargaining under the Industrial Relations Act.

Scottsbluff Police Off. Assn. v. City of Scottsbluff, 282 Neb. 676, 805 N.W.2d 320 (2011).

Police response time to a two-officer 911 emergency dispatch call relates to officer safety, and, thus, the manner in which it is determined affects a condition of employment. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

For purposes of bringing error proceedings, this statute does not require public employers to act in a judicial manner when administering pay scale grievances. *Kropp v. Grand Island Pub. Sch. Dist. No. 2*, 246 Neb. 138, 517 N.W.2d 113 (1994).

Subsection (1) of this section requires good faith bargaining, but only after a petition has been filed invoking the jurisdiction of the commission. Subsection (4) of this section does not require good faith bargaining; it simply authorizes public employers to negotiate with unions regarding the settlement of grievances and the establishment of written agreements as to wages, hours, and other conditions of employment. Subsection (5) of this section requires good faith bargaining, but only after an employer receives a request to bargain from the union. This section, unlike the National Labor Relations Act, does not establish a duty to bargain. Without this statutory authorization, a public employer would not have the right to bargain with public employees. *Kuhl v. Skinner*, 245 Neb. 794, 515 N.W.2d 641 (1994).

48-816.01 Hearing officer; appointment; when.

The presiding officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Source: Laws 1979, LB 444, § 6; Laws 2007, LB472, § 6.

48-816.02 Temporary relief; initial hearing; when held.

In any request for temporary relief under the Industrial Relations Act, the commission shall mandatorily hold the initial hearing within ten days from the date of the filing.

Source: Laws 1984, LB 832, § 4; Laws 1986, LB 809, § 6.

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.

The provision prohibiting a retroactive order means that the orders of the Court of Industrial Relations cannot apply to a period prior to that embraced within the dispute submitted to it. *Crete Education Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975).

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 municipali-

ties, 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 commis-

sion 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.

- 1. Commission of Industrial Relations, powers and duties
- 2. Establishing wage rates
- 3. Miscellaneous

1. Commission of Industrial Relations, powers and duties

A contract continuation clause deals with hours, wages, or terms and conditions of employment as set forth in this section and thus is mandatorily bargainable. *Central City Ed. Assn. v. Merrick Cty. Sch. Dist.*, 280 Neb. 27, 783 N.W.2d 600 (2010).

A prevalence determination by the Commission of Industrial Relations is a subjective determination, and the standard inherent in the word “prevalent” will be one of general practice, occurrence, or acceptance. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

A valid prevalence analysis by the Commission of Industrial Relations does not require as a prerequisite a complete identity of provisions in the array. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

When discussing the Commission of Industrial Relations’ authority under this section, the Nebraska Supreme Court has acknowledged that a prevalent wage rate to be determined by the commission must almost invariably be determined after consideration of a combination of factors. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist.* No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

In industrial disputes involving governmental services, the Commission of Industrial Relations is empowered to establish rates of pay and conditions of employment comparable to those prevalent for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. Employers selected for the comparative array must be demonstrated to be similar. The Commission is required to take into consideration the overall compensation received by the employees, including all fringe benefits, but dollar-for-dollar costing out of each benefit is not required. The Commission’s findings and order may establish or alter the scale of wages, including establishing wage-step progression schedules. *Lincoln Firefighters Assn. Local 644 v. City of Lincoln*, 253 Neb. 837, 572 N.W.2d 369 (1998).

The Commission of Industrial Relations is without the power to declare that interest shall be due on its orders from the date of their entry since the power is not specifically conferred by

statute, and such a construction is not necessary to accomplish the plain purpose of the act. *IBEW Local 763 v. Omaha P.P. Dist.*, 209 Neb. 335, 307 N.W.2d 795 (1981).

The Commission of Industrial Relations has no jurisdiction to hear breach of contract cases. Such cases must be heard in a court of competent jurisdiction. The Commission of Industrial Relations also lacks jurisdiction to grant declaratory or equitable relief, both of which are judicial functions and may not be exercised by an administrative agency. *State Coll. Ed. Assoc. & Chadron State Coll. v. Bd. of Trustees*, 205 Neb. 107, 286 N.W.2d 433 (1979); *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979).

The Commission of Industrial Relations does not have authority to alter the terms of an existing agreement. *Transport Workers of America v. Transit Authority of City of Omaha*, 205 Neb. 26, 286 N.W.2d 102 (1979).

The Commission of Industrial Relations cannot in a section 48-818 case obtain evidence on its own motion unless the moving party has first made a prima facie case of noncomparability with prevalent conditions. *General Driver and Helpers Union v. City of West Point*, 204 Neb. 238, 281 N.W.2d 772 (1979).

The Commission of Industrial Relations’ authority is limited to the provisions of this section which, at the time, provide that Commission of Industrial Relations’ findings and orders may only establish or alter the scale of wages, hours of labor, or condition of employment. *University Police Officers Union v. University of Nebraska*, 203 Neb. 4, 277 N.W.2d 529 (1979).

While Court of Industrial Relations may not order a school district to enter into a contract, it has the power to settle a dispute. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972).

2. Establishing wage rates

Employees have no vested right to placement on the top step of a new pay plan based upon 1 year of employment, and the employer does not act arbitrarily or capriciously in placing the

employees on the new pay plan. *Nebraska Pub. Emp. v. City of Omaha*, 247 Neb. 468, 528 N.W.2d 297 (1995).

In a case to establish or alter the scale of wages under this section, the burden is on the moving party to demonstrate that existing wages are not comparable to the prevalent wage rate. *Douglas Cty. Health Dept. Emp. Assn. v. Douglas Cty.*, 229 Neb. 301, 427 N.W.2d 28 (1988).

Where large number of job classifications exist and established lines of progression and relationships are present, key job classifications may be utilized to establish wages, provided reasonable requirements of prevalence and relevance are met. *IBEW Local 1536 v. City of Fremont*, 216 Neb. 357, 345 N.W.2d 291 (1984).

With regard to comparability, the Commission of Industrial Relations will enter an order either adjusting condition of employment or find subject city's condition to be lesser or greater than prevalent and adjust overall compensation accordingly. *IBEW Local 1536 v. City of Fremont*, 216 Neb. 357, 345 N.W.2d 291 (1984).

The Commission of Industrial Relations is required to consider every possible array which is sufficiently representative so as to determine whether the wage paid or benefits given are comparable. The Commission of Industrial Relation's determination of an array consisting of Nebraska counties excluding outstate counties fully complied with the statutory standard. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984).

Absent evidence to show dissimilarities of work performed, or working conditions, where there are local comparisons which can or should be made, the Commission of Industrial Relations cannot disregard them and create an array which is not reflective of the local labor market. The use of the "key job" classification system in situations involving a large number of employee classifications is approved. *AFSCME Local No. 2088 v. County of Douglas*, 208 Neb. 511, 304 N.W.2d 368 (1981).

Determinations made as to the acceptance and rejection of proposed "comparables" were within the expertise of the commission, were made after consideration and comparison of the evidence, and were arrived at by methods in accord with the requirements of this section, and are affirmed. *Fraternal Order of Police v. County of Adams*, 205 Neb. 682, 289 N.W.2d 535 (1980).

Prevalent wage rates for firemen must be determined by comparison with wages paid for comparable services in similar labor markets, determined upon the factors in this section, and adjusted for economic dissimilarities shown to exist with the compared markets. *Lincoln Fire Fighters Assn. v. City of Lincoln*, 198 Neb. 174, 252 N.W.2d 607 (1977).

In establishing wages, the Court of Industrial Relations must consider overall compensation, including fringe benefits, and it may compare with wages in similar labor markets. *Omaha Assn. of Firefighters v. City of Omaha*, 194 Neb. 436, 231 N.W.2d 710 (1975).

In selecting school districts for purpose of comparison, the ultimate question is whether those selected are sufficiently similar to the subject district and in establishing wage rates the entire situation, including fringe benefits, should be considered. *Crete Education Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975).

3. Miscellaneous

Act establishing Court of Industrial Relations does not violate any constitutional provision and the standards for its guidance are adequate. *Orleans Education Assn. v. School Dist. of Orleans*, 193 Neb. 675, 229 N.W.2d 172 (1975).

This section lists the factors that the Court of Industrial Relations should consider in establishing wage scales, hours of labor, and conditions of employment. *International Brotherhood of Electrical Workers v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965).

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.

48-819 Commission; orders; effect; contempt.

Orders, temporary or final, entered by the Commission of Industrial Relations shall be binding on all parties involved therein and shall be deemed to be of the same force and effect as like orders entered by a district court and shall be enforceable in appropriate proceedings in the courts of this state. Failure on the part of any person to obey any order, decree or judgment of the Commission of Industrial Relations, either temporary or final, shall constitute a contempt of such tribunal in all cases where a similar failure to obey a similar order, decree or judgment of a district court would constitute a contempt of such tribunal, and upon application to the appropriate district court of the state shall be dealt with as would a similar contempt of the said district court.

Source: Laws 1947, c. 178, § 19, p. 593.

Once an order is entered by the Commission of Industrial Relations, the rights of the parties are established, but a suit to enforce those rights must be brought in the district court; and, while an order of the commission, once sued upon, may bear prejudgment interest, the commission is not authorized to order payment of interest as part of its order. *IBEW Local 763 v. Omaha P.P. Dist.*, 209 Neb. 335, 307 N.W.2d 795 (1981).

The Commission of Industrial Relations cannot enforce its own order, it must resort to the appropriate district court.

University Police Officers Union v. University of Nebraska, 203 Neb. 4, 277 N.W.2d 529 (1979).

To pass scrutiny of Constitution of the United States, Nebraska Court of Industrial Relations, in case within its jurisdiction, must be deemed to have sufficient power to fully vindicate, preserve, and protect a federal constitutional right. *Teamsters Pub. Emp. U. Loc. 594 v. City of West Point*, 338 F.Supp. 927 (D. Neb. 1972).

48-819.01 Commission; power to make findings and enter orders; when.

Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of the Industrial Relations Act, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in such act, the commission shall have the power and authority to make such findings and to enter such temporary or permanent orders as the commission may find necessary to provide adequate remedies to the injured party or parties, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute.

Source: Laws 1979, LB 444, § 8; Laws 1986, LB 809, § 7.

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding

the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

The Commission of Industrial Relations has the authority to allow interest on an award. IAFF Local 831 v. City of No. Platte, 215 Neb. 89, 337 N.W.2d 716 (1983).

48-820 Repealed. Laws 1969, c. 407, § 8.

48-821 Public service; interference; coercion; violation; penalty.

It shall be unlawful for any person:

(1) To hinder, delay, limit or suspend the continuity or efficiency of any governmental service or any governmental service in a proprietary capacity, or the service of any public utility, by lockout, strike, slowdown, or other work stoppage;

(2) To coerce, instigate, induce, conspire with, intimidate or encourage any person to participate in any lockout, strike, slowdown or other work stoppage, which would hinder, delay, limit or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity, or the service of any public utility; or

(3) To aid or assist any such lockout, strike, slowdown, or other work stoppage by giving direction or guidance in the conduct of any such lockout, strike, slowdown or other work stoppage or by providing funds for the conduct or direction thereof, or for the payment of strike, unemployment or other benefits to those participating therein.

Any person who willfully violates any of the provisions of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1947, c. 178, § 21, p. 594; Laws 1977, LB 40, § 298.

48-822 Employees; no requirement to work without consent.

No provision of the Industrial Relations Act shall be construed to require an employee to work without his or her consent, or to make illegal the quitting of his or her job or withdrawal from his or her place of employment unless done in concert or by agreement with others.

Source: Laws 1947, c. 178, § 22, p. 594; Laws 1986, LB 809, § 8.

48-823 Act; liberal construction; commission; powers.

The Industrial Relations Act and all grants of power, authority, and jurisdiction made in such act to the commission shall be liberally construed to effectuate the public policy enunciated in section 48-802. All incidental powers necessary to carry into effect the Industrial Relations Act are hereby granted to and conferred upon the commission.

Source: Laws 1947, c. 178, § 23, p. 594; Laws 1986, LB 809, § 9.

Supervisory or managerial personnel may not enter into a bargaining unit with rank and file employees and may not retain the same bargaining agent. Nebraska Assn. of Pub. Emp. v.

Nebraska Game & Parks Commission, 197 Neb. 178, 247 N.W.2d 449 (1976).

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.

This section implicitly authorizes a duty of fair representation claim against a labor union by a member of that union. *Lamb v. Fraternal Order of Police Lodge No. 36*, 293 Neb. 138, 876 N.W.2d 388 (2016).

Pursuant to subsection (1), a public employer is required to negotiate in good faith regarding a new vacation accrual policy, because such a policy relates to a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

Where the organization representing public employees received notice of the public employer's intent to change the

vacation accrual policy, the organization's failure to make a timely request to bargain over the changes constituted a waiver of the right to bargain over what would otherwise have been a mandatory subject of bargaining. *Service Empl. Internat. v. Douglas Cty. Sch. Dist.*, 286 Neb. 755, 839 N.W.2d 290 (2013).

An employer may lawfully implement changes in terms and conditions of employment which are mandatory topics of bargaining only when three conditions have been met: (1) The parties have bargained to impasse, (2) the terms and conditions implemented were contained in a final offer, and (3) the implementation occurred before a petition regarding the year in

dispute is filed with the Commission of Industrial Relations. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

The purpose of this section is to provide public sector employees with the protection from unfair labor practices that private sector employees enjoy under the National Labor Relations Act, by making refusals to negotiate in good faith regarding mandatory bargaining topics a prohibited practice. *IBEW Local 763 v. Omaha Pub. Power Dist.*, 280 Neb. 889, 791 N.W.2d 310 (2010).

In an appeal from a Commission of Industrial Relations order regarding prohibited practices stated in this section, an appellate court will affirm a factual finding of the commission, if, considering the whole record, a trier of fact could reasonably conclude that the finding is supported by a preponderance of the competent evidence. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

The “deliberate and reckless untruth” standard of the National Labor Relations Act is not the appropriate method to analyze the speech of public service employees under the Industrial Relations Act. *Omaha Police Union Local 101 v. City of Omaha*, 274 Neb. 70, 736 N.W.2d 375 (2007).

An analysis of a violation under this section ends if the county commissioners had no knowledge of any discharged employee’s union organizing activities. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

In an appeal from an order of the Commission of Industrial Relations regarding prohibited practices under this section, concerning a factual finding, the court will affirm that finding if, considering the whole record, a trier of fact could reasonably conclude that the finding is supported by a preponderance of the competent evidence. The court will consider that fact that the commission, sitting as the trier of fact, saw and heard the witnesses and observed their demeanor while testifying and will give weight to the commission’s judgment as to credibility. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

The reasoning of *Wright Line*, 251 N.L.R.B. 1083 (1980), enforced 662 F.2d 899 (1st Cir. 1981), is adopted as the means for analyzing alleged prohibited practices under this section. *Nebraska Public Employees Local Union 251 v. Otoe Cty.*, 257 Neb. 50, 595 N.W.2d 237 (1999).

48-825 Labor negotiations; prohibited practices; complaints; procedure.

(1) A proceeding against a party alleging a violation of section 48-824 is commenced by filing a complaint with the commission within one hundred eighty days after the alleged violation thereby causing a copy of the complaint to be served upon the accused party. The accused party has ten days within which to file a written answer to the complaint. If the commission determines that the complaint has no basis in fact, the commission may dismiss the complaint. If the complaint has a basis in fact, the commission shall set a time for hearing. The parties may be represented by counsel, summon witnesses, and request the commission to subpoena witnesses on the requester’s behalf.

(2) The commission shall file its findings of fact and conclusions of law. If the commission finds that the party accused has committed a prohibited practice, the commission, within thirty days after its decision, shall order an appropriate remedy. Any party may petition the district court for injunctive relief pursuant to the rules of civil procedure.

(3) Any party aggrieved by any decision or order of the commission may, within thirty days after the date such decision or order is filed, appeal to the Court of Appeals.

(4) Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other:

- (a) If the commission acts without or in excess of its powers;
- (b) If the order was procured by fraud or is contrary to law;
- (c) If the facts found by the commission do not support the order; and
- (d) If the order is not supported by a preponderance of the competent evidence on the record considered as a whole.

Source: Laws 1995, LB 382, § 2.

In an appellate court’s review of orders and decisions of the Commission of Industrial Relations involving an industrial dispute over wages and conditions of employment, the appellate court’s standard of review is as follows: Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) If the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the

order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. *Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011*, 269 Neb. 956, 698 N.W.2d 45 (2005).

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of this section, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in section 48-802. Oper-

ating Engrs. Local 571 v. City of Plattsmouth, 265 Neb. 817, 660 N.W.2d 480 (2003).

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under subsection (2) of this section and section 48-819.01.

Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under subsection (2) of this section and section 48-819.01. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

48-826 Repealed. Laws 1969, c. 407, § 8.

48-827 Repealed. Laws 1969, c. 407, § 8.

48-828 Repealed. Laws 1969, c. 407, § 8.

48-829 Repealed. Laws 1969, c. 407, § 8.

48-830 Repealed. Laws 1969, c. 407, § 8.

48-831 Repealed. Laws 1969, c. 407, § 8.

48-832 Repealed. Laws 1969, c. 407, § 8.

48-833 Repealed. Laws 1969, c. 407, § 8.

48-834 Repealed. Laws 1969, c. 407, § 8.

48-835 Repealed. Laws 1969, c. 407, § 8.

48-836 Repealed. Laws 1969, c. 407, § 8.

48-837 Public employees; employee organization; bargaining.

Public employees shall have the right to form, join, and participate in or to refrain from forming, joining, or participating in any employee organization of their own choosing. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment and the administration of grievances arising thereunder.

Source: Laws 1969, c. 407, § 7, p. 1410; Laws 1986, LB 258, § 7; Laws 1986, LB 1250, § 4; Laws 1987, LB 661, § 29.

Under the provisions of Nebraska law, employees have not only a right to organize and be represented by a union but likewise have a right not to be organized and represented. Sheldon Station Employees Assn. v. Nebraska P.P.D., 202 Neb. 391, 275 N.W.2d 816 (1979).

A basic consideration in bargaining unit determination is whether a community of interest exists among the employees sufficient to warrant their inclusion in a single unit. American Assn. of University Professors v. Board of Regents, 198 Neb. 243, 253 N.W.2d 1 (1977).

It is unlawful for the employer of a public employee to exert pressure upon him to refrain from joining a recognized bargain-

ing unit. Local Union No. 647 v. City of Grand Island, 196 Neb. 693, 244 N.W.2d 515 (1976).

A uniquely personal termination of employment does not violate any rights under this section. Nebraska Dept. of Roads Employees Assn. v. Department of Roads, 189 Neb. 754, 205 N.W.2d 110 (1973).

School teachers are public employees within terms of this act. Sidney Education Assn. v. School Dist. of Sidney, 189 Neb. 540, 203 N.W.2d 762 (1973).

A labor organization may invoke the jurisdiction of the Court of Industrial Relations in behalf of its affected members. Mid-Plains Education Assn. v. Mid-Plains Nebraska Tech. College, 189 Neb. 37, 199 N.W.2d 747 (1972).

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

nal, 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.

Public employee bargaining units, created under the State Employees Collective Bargaining Act, section 81-1369 et seq., must file any petition seeking to decertify an exclusive collective bargaining agent, under the Rules of the Nebraska Commission of Industrial Relations 9(II)(C)(1) (rev. 2015), during the period preceding the commencement of the statutorily required bargaining period in section 81-1379. *Nebraska Protective Servs. Unit v. State*, 299 Neb. 797, 910 N.W.2d 767 (2018).

Before the restrictions prescribed by this section against undue fragmentation in the public employment area can be overcome, there must be strong evidence justifying the need and propriety of any additional division of a bargaining unit. *Sheldon Station Employees Assn. v. Nebraska P.P.D.*, 202 Neb. 391, 275 N.W.2d 816 (1979).

The considerations set forth in this section, in regard to collective bargaining units of employees, are not exclusive and the Commission of Industrial Relations may consider additional relevant factors in determining what bargaining unit of employees is appropriate. *American Fed. of S., C. & M. Emp. v.*

Counties of Douglas & Lancaster, 201 Neb. 295, 267 N.W.2d 736 (1978).

Since the policy of the statute is opposition to undue fragmentation of bargaining units, the statute is not limited in applicability only to those governmental subdivisions enumerated. *American Fed. of S., C. & M. Emp. v. State*, 200 Neb. 171, 263 N.W.2d 643 (1978).

House officers of the University Medical Center have a community of interest separate from graduate students and assistants sufficient to warrant a separate bargaining unit of house officers only. *House Officers Assn. v. University of Nebraska Medical Center*, 198 Neb. 697, 255 N.W.2d 258 (1977).

In determining appropriate bargaining units for public employees, the provisions of this section shall be considered and other relevant factors may be considered. *American Assn. of University Professors v. Board of Regents*, 198 Neb. 243, 253 N.W.2d 1 (1977).

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.

48-840 Repealed. Laws 1987, LB 782, § 4.

48-841 Repealed. Laws 1987, LB 782, § 4.

48-842 State employees; jurisdiction of commission; restricted.

The jurisdiction of the Commission of Industrial Relations to establish salary or base salary levels or other terms of compensation for state employees shall not be invoked before the end of the 1987 regular session of the Legislature and if so invoked shall only be effective beginning with fiscal year 1987-88 and each fiscal year thereafter. The Legislature may, during the 1987 regular session, prohibit by law any order of the Commission of Industrial Relations relating to state employees for fiscal year 1987-88 if it finds such order will be inconsistent with any legislation passed during the 1987 regular session dealing with collective bargaining by state employees. The Legislature hereby finds and declares that the State Employees Collective Bargaining Act is inconsistent with an order relating to state employees for fiscal year 1987-88 and therefor such orders shall be prohibited.

Source: Laws 1986, LB 1250, § 3; Laws 1987, LB 661, § 31.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

ARTICLE 9 SECONDARY BOYCOTT

Cross References

Constitutional provisions:

Labor organizations, see Article XV, sections 13 to 15, Constitution of Nebraska.

Section

- 48-901. Public policy.
- 48-902. Terms, defined.
- 48-903. Secondary boycott; unlawful.
- 48-904. Employees' right of self-organization.
- 48-905. Secondary boycott; injury to business, property, or person; damages.
- 48-906. Secondary boycott; temporary injunction; grounds.
- 48-907. Remedies; cumulative.
- 48-908. Remedies; venue; process.
- 48-909. Labor organization; suits against; designation.
- 48-910. Sections; violations; penalty.
- 48-911. Right to strike; right to work; freedom of speech.
- 48-912. Sections; construction.

48-901 Public policy.

The public policy of the state as to employment relations in the furtherance of which sections 48-901 to 48-912 are passed is declared to be as follows:

(1) It recognizes that there are three major interests involved, namely: That of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted, in the conduct of their controversy, to intrude directly into the primary rights of third parties to earn a livelihood, transact business and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint or coercion.

(3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of

fair conduct in employment relations and to provide a convenient and expeditious method through the courts by which these interests may have their respective rights and obligations adjudicated. While limiting individual and group rights of aggression and defense, the state substitutes processes of justice for the more primitive methods of trial by combat.

Source: Laws 1959, c. 231, § 1, p. 806.

48-902 Terms, defined.

As used in sections 48-901 to 48-912, unless the context otherwise requires:

(1) Labor organization shall mean any organization, association, or group of any kind, or any agency or employee representation committee or plan, whether incorporated or unincorporated, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(2) Labor dispute shall mean any controversy between an employer and the majority of his or her employees concerning the right or process or details of collective bargaining or the designation of an employee representative. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute;

(3) Employer shall mean a person who engages the services of an employee, and includes any person acting on behalf of an employer within the scope of his or her authority, express or implied, but shall not include the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact;

(4) Person shall include one or more individuals, partnerships, limited liability companies, associations, corporations, legal representatives, trustees, or receivers; and

(5) Secondary boycott shall mean combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse, or by intentionally and unreasonably hindering or delaying the same, (b) picketing, (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies, (d) hindering or preventing, by threats, intimidation, force, coercion or sabotage, the obtaining, use, or disposition of materials, equipment, or services, or (e) by any other unlawful means, in order to bring him or her against his or her will into a concerted plan to coerce or inflict damage upon another.

Source: Laws 1959, c. 231, § 2, p. 808; Laws 1993, LB 121, § 295.

48-903 Secondary boycott; unlawful.

It shall be unlawful for any person to engage in a secondary boycott as herein defined, notwithstanding the provisions of any contract to the contrary; *Provided*, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

Source: Laws 1959, c. 231, § 3, p. 809.

48-904 Employees' right of self-organization.

Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of

their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

Source: Laws 1959, c. 231, § 4, p. 809.

48-905 Secondary boycott; injury to business, property, or person; damages.

Any person injured in his business, property or person by reason of any unlawful act as defined in section 48-903, may sue therefor in the district courts of this state, and shall recover the damages sustained by him, trebled, his reasonable attorneys' fees and the cost of the litigation.

Source: Laws 1959, c. 231, § 5, p. 809.

48-906 Secondary boycott; temporary injunction; grounds.

Any person injured or threatened with injury in his business, property or person by reason of any commission or threat of an unlawful act as provided in section 48-903 may, if the remedy provided by section 48-905 be inadequate, obtain injunctive relief, including temporary relief pending trial upon showing of an emergency, in the district courts of this state in accordance with the statutes, rules and practices applicable in other civil cases.

Source: Laws 1959, c. 231, § 6, p. 809.

48-907 Remedies; cumulative.

The remedies herein provided are cumulative and shall be in addition to any other remedies, civil or criminal, now or hereafter provided by law.

Source: Laws 1959, c. 231, § 7, p. 809.

48-908 Remedies; venue; process.

An action under sections 48-901 to 48-912 may be brought in the district court of the county where the cause of action or some part thereof arose, or in the county where the defendant labor organization, or some one of the defendant labor organizations, maintains an office, or in which its agents are engaged in acting for or representing employees or in the county where the plaintiff resides and summons may be served upon the defendant labor organization or some one of the defendant labor organizations.

Source: Laws 1959, c. 231, § 8, p. 809.

Cross References

For other provisions for actions against labor organizations, see sections 25-313 and 25-530.08.

48-909 Labor organization; suits against; designation.

In any action brought under sections 48-901 to 48-912, any labor organization may be sued in its own name and without identification of any of the persons who are its members.

Source: Laws 1959, c. 231, § 9, p. 810; Laws 1983, LB 447, § 73.

Cross References

For other provisions for actions against labor organizations, see sections 25-313 and 25-530.08.

48-910 Sections; violations; penalty.

Any individual, association, or corporation that shall violate any of the provisions of sections 48-901 to 48-912 shall be guilty of a Class II misdemeanor.

Source: Laws 1959, c. 231, § 10, p. 810; Laws 1977, LB 40, § 299.

48-911 Right to strike; right to work; freedom of speech.

Except as otherwise specifically provided, nothing contained in sections 48-901 to 48-912 shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in sections 48-901 to 48-912 be so construed as to invade unlawfully the right to freedom of speech.

Source: Laws 1959, c. 231, § 11, p. 810.

48-912 Sections; construction.

It is the intention of the Legislature that sections 48-901 to 48-912 shall operate according to their terms to the full extent permitted by the Constitutions of the State of Nebraska and of the United States of America. In the event any section or part of sections 48-901 to 48-912, or the application thereof to any person or situation shall be held unconstitutional, sections 48-901 to 48-912 shall nevertheless continue in full effect with respect to all parts and applications thereof not so held to be unconstitutional.

Source: Laws 1959, c. 231, § 12, p. 810.

ARTICLE 10**AGE DISCRIMINATION**

Section

- 48-1001. Act, how cited; discrimination in employment because of age; policy; declaration of purpose.
- 48-1002. Terms, defined.
- 48-1003. Limitation on prohibitions; practices not prevented or precluded.
- 48-1004. Unlawful employment practices; enumerated.
- 48-1005. Violations; penalty.
- 48-1006. Repealed. Laws 2007, LB 265, § 40.
- 48-1007. Equal Opportunity Commission; enforcement; powers.
- 48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.
- 48-1009. Court; jurisdiction; relief.
- 48-1010. Suits against governmental bodies; authorized.

48-1001 Act, how cited; discrimination in employment because of age; policy; declaration of purpose.

(1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of

persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2)(c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

Source: Laws 1963, c. 281, § 1, p. 838; Laws 1972, LB 1357, § 1; Laws 2007, LB265, § 13.

In an age discrimination suit brought under the Act Prohibiting Unjust Discrimination in Employment Because of Age, the jury is not to be instructed on the elements which constitute a submissible case. Although the ultimate burden of persuasion by a preponderance of the evidence in an age discrimination action at all times remains with plaintiff, the method of proof is for plaintiff to prove a prima facie case; if plaintiff succeeds in proving a prima facie case, defendant has the burden of articulating some legitimate, nondiscriminatory reason for its action. Should defendant succeed in so doing, plaintiff must establish by a preponderance of the evidence that the legitimate reasons offered by defendant were not its true reasons, but a pretext for discrimination. *Humphrey v. Nebraska Public Power Dist.*, 243 Neb. 872, 503 N.W.2d 211 (1993).

Persons seeking relief under this section must allege a violation by an employer of 25 or more persons. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

The federal practice for cases arising under the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. sec. 621 et seq. (1982), may be instructive as to cases arising under the subject act. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

The state, through its Legislature, has acted to prohibit unjust discrimination in employment because of age. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

48-1002 Terms, defined.

For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means 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 includes an agent of such a person, but does not include an agency of the United States, except that such

term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Source: Laws 1963, c. 281, § 2, p. 839; Laws 1972, LB 1357, § 2; Laws 1973, LB 265, § 1; Laws 1977, LB 162, § 20; Laws 1983, LB 424, § 1; Laws 1983, LB 626, § 73; Laws 1993, LB 121, § 296; Laws 2007, LB265, § 14.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

For the purpose of defining an employer under Nebraska's age discrimination act, two distinct entities may be considered a single employer if the two businesses have (1) interrelated operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. *Billingsley v. BFM Liquor Mgmt.*, 264 Neb. 56, 645 N.W.2d 791 (2002).

Persons seeking relief under alleged violation of rights set out in section 48-1001 must be persons within the definitions set out in this section. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

48-1003 Limitation on prohibitions; practices not prevented or precluded.

(1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

Source: Laws 1963, c. 281, § 3, p. 839; Laws 1972, LB 1357, § 3; Laws 1979, LB 161, § 2; Laws 1983, LB 424, § 2; Laws 2007, LB265, § 15.

48-1004 Unlawful employment practices; enumerated.

(1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

Source: Laws 1963, c. 281, § 4, p. 840; Laws 1972, LB 1357, § 4; Laws 1977, LB 162, § 21; Laws 2007, LB265, § 16.

1. Ultimate issue
2. Miscellaneous

1. Ultimate issue

Although the burden of production shifts between the plaintiff and the employer, the plaintiff retains the ultimate burden of persuasion, and the ultimate question is discrimination or retaliation *vel non*. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The ultimate issue in an age discrimination case is whether age was a determining factor in the employer's decision to take the adverse employment action. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

To survive summary judgment in a discrimination case, the nonmoving party must do more than simply create a factual dispute as to the issue of pretext; he or she must offer sufficient evidence for a reasonable trier of fact to infer discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

Once an age discrimination case has been fully tried on the merits, the focus is on the ultimate question of whether the employer intentionally discriminated against the employee and not on the adequacy of a party's showing at any particular stage of the trial. Although an employer's proffered reason for discharging an employee may not be truthful, that in and of itself does not prove a pretext; the pretext must be shown to be a pretext for discrimination. *Synacek v. Omaha Cold Storage*, 247 Neb. 244, 526 N.W.2d 91 (1995).

2. Miscellaneous

One isolated comment about retirement is not enough to demonstrate pretext for purposes of age discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

Retirement inquiries can sometimes be so unnecessary and excessive as to constitute evidence of discriminatory harassment. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), framework is a procedural device of order of proof and production, designed to force an employer to reveal information that is available only to the employer, i.e., any unstated reasons for the adverse employment action, as well as any discretionary factors underlying its decision. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

After the plaintiff proves a prima facie case of age discrimination in a suit brought under the disparate impact theory, the

employer must show the employment practice is related to job performance or justified by job necessity. Although intent is irrelevant in a disparate impact theory, the plaintiff may then rebut the defendant's reason of business necessity by showing that an alternative practice lacking a discriminatory effect would satisfy the employer's legitimate interests. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Although the ultimate burden of persuasion by a preponderance of the evidence at all times remains with the plaintiff, the method of proof is for the plaintiff to prove a prima facie case; if the plaintiff succeeds in so doing, the defendant has the burden of articulating some legitimate, nondiscriminatory reason for its action. Should the defendant succeed in so doing, the plaintiff must establish by a preponderance of the evidence that the legitimate reasons offered by the defendant were a pretext for discrimination. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Following the lead of federal courts, a plaintiff may show pretext in an age discrimination case brought under the disparate treatment theory by showing either that the employment decision was motivated by a discriminatory reason or by showing the employer's stated reason is not worthy of credence. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

Following the lead of the federal courts, a plaintiff may establish a prima facie case of age discrimination by virtue of disparate treatment by showing that (1) she or he was in the protected age category, (2) she or he met the applicable qualifications, (3) despite those qualifications she or he was not promoted, and (4) other employees of similar qualifications, who were not members of a protected group, were promoted at the time plaintiff's request for a promotion was denied. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

In order to prove a prima facie case of retaliation, a plaintiff must show she or he was not promoted following protected activities of which the employer was aware. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

To prove a prima facie case of disparate impact in an age discrimination suit under the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. sec. 621 et seq. (1982), the plaintiff must show (1) an outwardly neutral employment practice, and (2) a significantly adverse or disproportionate impact on the protected age group produced by the facially neutral employment practice. *Allen v. AT&T Technologies*, 228 Neb. 503, 423 N.W.2d 424 (1988).

48-1005 Violations; penalty.

Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

Source: Laws 1963, c. 281, § 5, p. 840; Laws 1972, LB 1357, § 8; Laws 1977, LB 40, § 300; Laws 2007, LB265, § 17.

48-1006 Repealed. Laws 2007, LB 265, § 40.**48-1007 Equal Opportunity Commission; enforcement; powers.**

The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under the act, (2) to cooperate with other federal, state, and local agencies and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act, (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act, and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Source: Laws 1972, LB 1357, § 5; Laws 1977, LB 162, § 22; Laws 2007, LB265, § 18.

48-1008 Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written charge; limitation on action; respondent; file written response; commission; powers.

(1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Source: Laws 1972, LB 1357, § 6; Laws 1977, LB 162, § 23; Laws 1983, LB 424, § 3; Laws 2007, LB265, § 19.

The thirty-day period herein is a condition precedent to the ripening of the cause of action of an aggrieved employee claiming age discrimination in employment. Equal Opportunity Commission v. Weyerhaeuser Co., 198 Neb. 104, 251 N.W.2d 730 (1977).

48-1009 Court; jurisdiction; relief.

In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Source: Laws 1972, LB 1357, § 7; Laws 2007, LB265, § 20.

The proper procedure under this section is for the trial court to submit the damages issue to the jury, if one is empaneled, and reserve ruling on a plaintiff's requested equitable relief until after the jury renders a verdict. A trial court should then enter an order on the jury verdict and reserve entering judgment until after the court has considered any requests for equitable relief. Billingsley v. BFM Liquor Mgmt., Inc., 259 Neb. 992, 613 N.W.2d 478 (2000). Age discrimination cases that seek mandatory injunctions as well as damages are equitable in nature. A jury empaneled in an equity case is advisory only. Synacek v. Omaha Cold Storage, 247 Neb. 244, 526 N.W.2d 91 (1995).

48-1010 Suits against governmental bodies; authorized.

The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.

Source: Laws 1983, LB 424, § 4; Laws 2007, LB265, § 21.

ARTICLE 11

NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

Cross References

Age discrimination, see section 48-1001 et seq.
Sex-based wage discrimination, see section 48-1219 et seq.

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48-1101 Purpose.

It is the policy of this state to foster the employment of all employable persons in the state on the basis of merit regardless of their race, color, religion, sex, disability, or national origin and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, or national origin. Denying equal opportunity for employment because of race, color, religion, sex, disability, or national origin is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. The policy of this state does not require any person to employ an applicant for employment because of his or her race, color, religion, sex, disability, or national origin, and the policy of this state does not require any employer, employment agency, labor organization, or joint labor-management committee to grant preferential treatment to any individual or to any group because of race, color, religion, sex, disability, or national origin.

It is the public policy of this state that all people in Nebraska, both with and without disabilities, shall have the right and opportunity to enjoy the benefits of living, working, and recreating within this state. It is the intent of the Legislature that state and local governments, Nebraska businesses, Nebraska labor organizations, and Nebraskans with disabilities understand their rights and responsibilities under the law regarding employment discrimination and the prevention of discrimination on the basis of disability.

Source: Laws 1965, c. 276, § 1, p. 782; Laws 1973, LB 266, § 1; Laws 1993, LB 360, § 2.

1. Burden-shifting framework
2. Miscellaneous

1. Burden-shifting framework

The three-part burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), is not the exclusive method of proving disparate treatment and was never intended to be rigid, mechanized, or ritualistic. *Hartley v. Metropolitan Util. Dist.*, 294 Neb. 870, 885 N.W.2d 675 (2016).

In a discrimination suit brought under the provisions of the Nebraska Fair Employment Practice Act, the evidence presented on the issue of discrimination against a disabled person shall be as follows: (1) The complainant has the burden of proving a prima facie case of discrimination; (2) if the complainant succeeds in proving that prima facie case, the burden shifts to the respondent to articulate some legitimate, nondiscriminatory reason for the employee's rejection or discharge from employment; and (3) should the respondent carry the burden, the complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were not its true reasons, but were a pretext for discrimination. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

2. Miscellaneous

A plaintiff alleging he or she was subjected to retaliatory action based upon opposing or refusing to participate in a practice or action which was unlawful only has to show a reasonable, good faith belief such practice or action was unlawful. *Haffke v. Signal 88*, 306 Neb. 625, 947 N.W.2d 103 (2020).

In order to show retaliation under the Nebraska Fair Employment Practice Act, a plaintiff must establish (1) he or she engaged in protected conduct, (2) he or she was subjected to an adverse employment action, and (3) there was a causal connection between the protected conduct and the adverse action. *Haffke v. Signal 88*, 306 Neb. 625, 947 N.W.2d 103 (2020).

A prima facie case of discrimination may be proved by showing (1) that the complainant is a member of a protected class within the meaning of the Nebraska Fair Employment Practice

Act; (2) that the complainant is qualified for the position of employment sought; (3) that the complainant applied for and was rejected or discharged from that position; and (4) that after the complainant was rejected or discharged, the job remained open. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

Persons seeking relief under this section must allege a violation by an employer of 15 or more persons. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

A female is a member of a protected class. *Lincoln County Sheriff's Office v. Horne*, 228 Neb. 473, 423 N.W.2d 412 (1988).

"Disability" designates a protected class regarding employment in Nebraska. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

The purpose of the Fair Employment Practice Act is to establish a policy by the state to foster the employment of employable persons; the state policy does not require an employer to grant preferential treatment to any individual or group because of race, color, religion, sex, disability, or national origin. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

These sections do not mandate the employment of firemen with visual defects which would affect their ability to engage in that occupation. *McCrea v. Cunningham*, 202 Neb. 638, 277 N.W.2d 52 (1979).

One hundred eighty day statute of limitations under Fair Employment Practices Act may not be applied in federal civil rights action. *Chambers v. Omaha Public School Dist.*, 536 F.2d 222 (8th Cir. 1976).

Petition for civil rights relief alleging employment discrimination dismissed where requisite prior exhaustion of administrative remedies disregarded. *Thorson v. City of Omaha*, 445 F.Supp. 268 (D. Neb. 1978).

Under facts in this case, corporation did not violate Civil Rights Act by transferring employee to lower paying job when he refused to work on his Sabbath day. *Dixon v. Omaha P.P. Dist.*, 385 F.Supp. 1382 (D. Neb. 1974).

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;

(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;

(19) Race is inclusive of characteristics such as skin color, hair texture, and protective hairstyles; and

(20) Protective hairstyles includes braids, locks, and twists.

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; Laws 2021, LB451, § 1.
Effective date August 28, 2021.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

Uniform Controlled Substances Act, see section 28-401.01.

1. Major life activities
2. Drug use
3. Miscellaneous

1. Major life activities

Concentrating, thinking, and communicating are major life activities under subdivision (9) of this section. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

Under subdivision (9) of this section, “major life activities” are those activities that are of central importance to daily life. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

Under subdivision (9) of this section, to be substantially limited in the major life activity of working, the plaintiff must show that he or she was significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

2. Drug use

Drug addiction is an impairment under subdivision (9) of this section, but it is not a disability unless it substantially limits a major life activity or is perceived by the employer to substantially limit a major life activity. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

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

3. Miscellaneous

To show that an employer regarded an employee as disabled under subdivision (9)(c) of this section, the employee must demonstrate either that (1) despite having no impairment at all, the employer mistakenly believed that the employee had an impairment that substantially limited one or more major life activities, or (2) the employee had a nonlimiting impairment

that the employer mistakenly believed substantially limited one or more major life activities. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

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

The payroll method, in which an employee is counted on a given day if he or she was on the payroll on that day, should be used to determine whether an entity has the requisite number of employees to qualify as an employer as defined in subsection (2) of this section. *Bluff's Vision Clinic v. Krzyzanowski*, 251 Neb. 116, 555 N.W.2d 556 (1996).

Persons seeking relief under alleged violation of rights set out in section 48-1101 must be persons within the definitions set out in this section. *Steier v. Crosier Fathers of Hastings*, 242 Neb. 16, 492 N.W.2d 870 (1992).

Epilepsy is included within the definition of “disability,” but only if the epilepsy is unrelated to the person’s ability to engage in a particular occupation. *Father Flanagan’s Boys’ Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

These sections do not mandate the employment of firemen with visual defects which would affect their ability to engage in that occupation. *McCrea v. Cunningham*, 202 Neb. 638, 277 N.W.2d 52 (1979).

For purposes of subsection (2) of this section, to determine whether a person is an “employer”, a “payroll method” shall be used, whereby a week is counted if an employer has 15 employees on the payroll for that week, regardless of whether or not each employee worked each day of the week in question. *Bluff's Vision Clinic v. Krzyzanowski*, 4 Neb. App. 380, 543 N.W.2d 761 (1996).

48-1103 Exceptions to act.

The Nebraska Fair Employment Practice Act shall not apply to:

(1) A religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the

carrying on by such corporation, association, or society of its religious activities; or

(2) The employment of any individual (a) by his or her parent, grandparent, spouse, child, or grandchild or (b) in the domestic service of any person.

Source: Laws 1965, c. 276, § 3, p. 784; Laws 1993, LB 360, § 7.

48-1104 Unlawful employment practice for an employer.

It shall be an unlawful employment practice for an employer:

(1) To fail or refuse to hire, to discharge, or to harass any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

(2) To limit, advertise, solicit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's race, color, religion, sex, disability, marital status, or national origin.

Source: Laws 1965, c. 276, § 4, p. 785; Laws 1973, LB 266, § 3; Laws 1977, LB 161, § 2; Laws 1993, LB 124, § 2.

1. Burden-shifting framework 2. Miscellaneous

1. Burden-shifting framework

Although the burden of production shifts between the plaintiff and the employer, the plaintiff retains the ultimate burden of persuasion, and the ultimate question is discrimination or retaliation *vel non*. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), framework is a procedural device of order of proof and production, designed to force an employer to reveal information that is available only to the employer, i.e., any unstated reasons for the adverse employment action, as well as any discretionary factors underlying its decision. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

To survive summary judgment in a discrimination case, the nonmoving party must do more than simply create a factual dispute as to the issue of pretext; he or she must offer sufficient evidence for a reasonable trier of fact to infer discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The procedure to be followed in presenting evidence relevant to a question about discrimination against a disabled person is: (1) The complainant has the burden of proving a *prima facie* case of discrimination; (2) the respondent then must articulate some legitimate, nondiscriminatory reason for the rejection or firing; and (3) the complainant must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were not its true reasons, but were a pretext for discrimination. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

2. Miscellaneous

Generally, a temporal connection between the protected conduct and the adverse employment action by itself is not enough to present a genuine factual issue on retaliation. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

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

The key inquiry in a discrimination case is whether the individual's condition inhibits his or her ability to perform his or her job safely and efficiently. *IBP, Inc. v. Sands*, 252 Neb. 573, 563 N.W.2d 353 (1997).

Volunteers are not employees and may not bring suit for damages under the Nebraska Fair Employment Practice Act. *City of Fort Calhoun v. Collins*, 243 Neb. 528, 500 N.W.2d 822 (1993).

A mere showing that one was not interviewed or hired for a position is insufficient to establish a violation of the Fair Employment Practice Act because in order to recover for a violation, complainant must prove by a preponderance of the evidence that complainant was refused hire on the basis of sex. Where there is no charge of a universal discriminatory practice, complainant must establish, by a preponderance of the evidence, an act done intentionally to discriminate. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

A regulated interstate carrier, subject to superior federal law, had a valid defense to state statutes regarding employment discrimination based upon disability. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

It is not a violation of this section to refuse to hire a woman to the position of a police patrolman when in each instance, there were better qualified male applicants available for the position, even if the male applicants with the higher test scores were added to the list after the score of the female applicant had placed her at the top of the list. *Snygg v. City of Scottsbluff Police Dept.*, 201 Neb. 16, 266 N.W.2d 76 (1978).

A classification based on pregnancy is not one based on sex. *Richards v. Omaha Public Schools*, 194 Neb. 463, 232 N.W.2d 29 (1975).

This section does not provide a private cause of action to a person claiming to be aggrieved by an employer's unlawful employment practice. Sections 48-1116 to 48-1120 do provide a comprehensive administrative remedy from which an appeal may be taken to state district court. *Miller v. Union Pacific R. Co.*, 539 F.Supp. 134 (D. Neb. 1982).

An award of punitive damages is not required for a violation of this section unless necessary to fully protect any federal

constitutional right involved. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

48-1105 Unlawful employment practice for employment agency.

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin, or to classify or refer for employment any individual on the basis of race, color, religion, sex, disability, marital status, or national origin.

Source: Laws 1965, c. 276, § 5, p. 785; Laws 1973, LB 266, § 4; Laws 1977, LB 161, § 3.

48-1106 Unlawful employment practice for labor organization.

It shall be an unlawful employment practice for a labor organization:

(1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, disability, marital status, or national origin;

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect such individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, disability, marital status, or national origin; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Source: Laws 1965, c. 276, § 6, p. 785; Laws 1973, LB 266, § 5; Laws 1977, LB 161, § 4.

48-1107 Unlawful employment practice controlling apprenticeship or training programs.

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, sex, disability, marital status, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Source: Laws 1965, c. 276, § 7, p. 786; Laws 1973, LB 266, § 6; Laws 1977, LB 161, § 5.

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.

Apart from an exception for summary judgments, in a discrimination action brought under the Nebraska Fair Employment Practice Act, a court evaluates the evidence under the three-part burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under that framework, (1) the plaintiff has the burden of proving a prima facie case of discrimination; (2) if the plaintiff proves a prima facie case, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for the

adverse employment action; and (3) if the employer articulates a nondiscriminatory reason for its action, the employee maintains the burden of proving that the stated reason was pretextual. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

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

48-1107.02 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.

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

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

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

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

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

Under former subsection (10) of this section, an employer's doubts about an employee's ability to perform the essential functions of a job may be created by an employee's request for

accommodations, frequent absences, or request for leave because of his or her medical condition. Such doubts can also be raised by the employer's knowledge of an employee's behavior that poses a direct threat to the employee or others. *Arens v. NEBCO, Inc.*, 291 Neb. 834, 870 N.W.2d 1 (2015).

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

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

48-1108 Lawful employment practices.

Notwithstanding any other provision of the Nebraska Fair Employment Practice Act:

(1) It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program on the basis of religion, sex, disability, marital status, or national origin in those certain instances when religion, sex, disability, marital status, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) It shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of such school, college, university, or other educational institution of learning is directed toward the propagation of a particular religion;

(3) It shall not be an unlawful employment practice for an employer to enact any bona fide health and safety standard that regulates characteristics associated with race if the employer demonstrates that:

(a) Without the implementation of such standard, it is reasonably certain that the health and safety of the applicant, employee, or other materially connected person will be impaired;

(b) The standard is adopted for nondiscriminatory reasons;

(c) The standard is applied equally; and

(d) The employer has engaged in good faith efforts to reasonably accommodate the applicant or employee; and

(4) It shall not be an unlawful employment practice for the Nebraska State Patrol, a county sheriff, a city or village police department, or any other law enforcement agency in this state or the Nebraska National Guard to impose its own dress and grooming standards.

Source: Laws 1965, c. 276, § 8, p. 786; Laws 1973, LB 266, § 7; Laws 1977, LB 161, § 6; Laws 1993, LB 360, § 8; Laws 2021, LB451, § 2.

Effective date August 28, 2021.

A classification based on sex is lawful if it is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise. Richards v. Omaha Public Schools, 194 Neb. 463, 232 N.W.2d 29 (1975).

48-1108.01 Lawful employment practices for covered entity.

It shall not be an unlawful employment practice for a covered entity to:

(1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) Require employees to comply with any federal regulations concerning the use of alcohol or the illegal use of drugs which are applicable to the position of the employee or to the industry involved; or

(4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

Source: Laws 1993, LB 360, § 4.

48-1109 Repealed. Laws 2015, LB 627, § 7.

48-1110 National security employment; exception.

Notwithstanding any other provision of the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if:

(1) The occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive Order of the President; and

(2) Such individual has not fulfilled or has ceased to fulfill that requirement.

Source: Laws 1965, c. 276, § 10, p. 787; Laws 1993, LB 360, § 10.

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.

A regulated interstate carrier, subject to superior federal law, had a valid defense to state statutes regarding employment discrimination based upon disability. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

48-1112 Indians; preferential treatment.

Nothing in the Nebraska Fair Employment Practice Act shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

Source: Laws 1965, c. 276, § 12, p. 788; Laws 1993, LB 360, § 12.

48-1113 Preferential treatment; when not required.

Nothing in the Nebraska Fair Employment Practice Act shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to the act to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, disability, marital status, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, disability, marital status, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, disability, marital status, or national origin in any community, section, or other area, or in the available work force in any community, section, or other area.

Source: Laws 1965, c. 276, § 13, p. 788; Laws 1973, LB 266, § 9; Laws 1977, LB 161, § 8; Laws 1993, LB 360, § 13.

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.

A plaintiff must establish a prima facie case of retaliation under this section by showing (1) he or she engaged in protected conduct, (2) he or she was subjected to an adverse employment action, and (3) there was a causal connection between the protected conduct and the adverse action. *Knapp v. Ruser*, 297 Neb. 639, 901 N.W.2d 31 (2017).

The unlawful practice, the opposition to which is protected by subsection (3) of this section, is that of the employer and not that of fellow employees. *Wolfe v. Becton Dickinson & Co.*, 266 Neb. 53, 662 N.W.2d 599 (2003).

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

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

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

The provision of the Nebraska Fair Employment Practice Act prohibiting employers from discriminating against an employee who has opposed any practice or refused to carry out any action

unlawful under federal or state law and reasonable policy dictate that an employee's opposition to any unlawful act of the employer, whether or not the employer pressures the employee to actively join in the illegal activity, is protected under the act. *Bonn v. City of Omaha*, 19 Neb. App. 874, 814 N.W.2d 114 (2012).

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

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

An individual who has opposed discriminatory employment practices is protected by this section of the Nebraska Fair Employment Practice Act, making it unlawful for an employer to discriminate against an employee because he or she has opposed any practice unlawful under federal law or the laws of Nebraska. *Helvering v. Union Pacific RR. Co.*, 13 Neb. App. 818, 703 N.W.2d 134 (2005).

48-1115 Notice of employment; preference or discrimination; race, color, religion, sex, disability, marital status, national origin; unlawful; exception.

It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, marital status, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, disability, marital status, or national origin when religion, sex, disability, marital status, or national origin is a bona fide occupational qualification for employment.

Source: Laws 1965, c. 276, § 15, p. 789; Laws 1973, LB 266, § 10; Laws 1977, LB 161, § 9.

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.

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.

48-1118 Unlawful practice; charge; time for filing; prescreening procedure and determination; investigation; confidential informal actions; procedure; violation; penalty; interrogatories.

(1) Whenever it is charged in writing under oath or affirmation by or on behalf of a person or persons claiming to be aggrieved and such charge sets forth the facts upon which it is based that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the commission staff shall furnish such employer, employment agency, or labor organization with a copy of such charge within ten days, including a statement of the date, place, and circumstances of the alleged unlawful employment practice. Prior to initiating any investigation, the commission staff shall screen a charge pursuant to an established, clearly defined prescreening procedure to determine subject matter jurisdiction to handle such charge. Any charge without sufficient subject matter jurisdiction shall not be investigated and notice of such prescreening determination shall be promptly conveyed by the executive director to the person claiming to be aggrieved. When a charge is determined to be within the subject matter jurisdiction of the commission, the commission staff shall make an investigation of such charge, but such charge shall not be made public by the commission. If the executive director determines after such investigation that there is not reasonable cause to believe that the charge is true, the executive director shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of his or her action. If the executive director determines after such investigation that there is reasonable cause to believe that the charge is true, the commission shall endeavor to eliminate any such alleged unlawful employment practice and settle any claim by informal methods of conference, conciliation, persuasion, mediation, or arbitration. The settlement efforts shall be scheduled and completed within thirty days of the probable cause finding. Nothing said or done during and as a part of such endeavors may be made public by the commission without the written consent of the parties or used as evidence in a subsequent proceeding. Any officer or employee of the commission who makes public in any manner whatever any information in violation of this subsection shall be guilty of a Class III misdemeanor except as provided in subdivision (3) of section 48-1117.

(2) A written charge of violation of the Nebraska Fair Employment Practice Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall be required to file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the executive director. Failure by any complainant to cooperate with the commission, its investigators, or staff, except for good cause shown, shall result in dismissal of the complaint by the executive director.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and

judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Source: Laws 1965, c. 276, § 18, p. 792; Laws 1973, LB 265, § 3; Laws 1977, LB 40, § 301; Laws 1977, LB 161, § 12; Laws 1979, LB 4, § 4; Laws 1989, LB 175, § 2; Laws 1993, LB 124, § 4.

The 300-day statute of limitations began to run on the date that the employer notified the employee that she had been placed on furlough and that her employment would terminate months later if she did not obtain another position with the employer before that later date. *Brown v. Regional West Med. Ctr.*, 300 Neb. 937, 916 N.W.2d 590 (2018).

Generally, when a private individual brings a discrimination action against an employer covered by the Nebraska Fair Em-

ployment Practice Act, the Nebraska Equal Opportunity Commission is not a proper party to any subsequent appeal. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

One hundred eighty day statute of limitations under Fair Employment Practices Act may not be applied in federal civil rights action. *Chambers v. Omaha Public School Dist.*, 536 F.2d 222 (8th Cir. 1976).

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.

Under subsection (3) of this section, in order to show a prima facie case of discrimination, the plaintiff must show that the discrimination was intentional. *Lincoln County Sheriff's Office v. Horne*, 228 Neb. 473, 423 N.W.2d 412 (1988).

Backpay awards under the Nebraska Fair Employment Practice Act must be reduced by earnings or amounts earnable with reasonable diligence by the person or persons discriminated against. Once an unlawfully discharged employee produces evidence in support of his claim for backpay, contending that he was unable to find comparable work, the employer has the burden of showing that the discharged employee did not exercise reasonable diligence in mitigating his damages. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Prejudgment interest is not generally allowed on backpay awards under the Nebraska Fair Employment Practice Act. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Unemployment compensation benefits should be deducted from a backpay award under the Nebraska Fair Employment

Practice Act. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

Generally, when a private individual brings a discrimination action against an employer covered by the Nebraska Fair Employment Practice Act, the Nebraska Equal Opportunity Commission is not a proper party to any subsequent appeal. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

To sustain a charge of discrimination where there is no charge of a universal discriminatory practice or system, complainant, in the record, must establish that the employer intentionally engaged in acts which discriminated against complainant in violation of the statutory prohibitions. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

An award of punitive damages by the commission is not required for a statutory violation, but if it would be required to fully vindicate a federal constitutional right when before a federal court, it would be required before the commission or a state court. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

48-1120 Appeal; procedure; attorney's fees; failure to appeal; effect.

(1) Any party to a proceeding before the commission aggrieved by such decision and order and directly affected thereby may appeal the decision and order, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) In any action or proceeding under the Nebraska Fair Employment Practice Act wherein an appeal is lodged in the district court, the court, in its discretion, may allow the prevailing party reasonable attorney's fees as part of the costs.

(3) If a respondent does not appeal an order, the commission may obtain a decree of the court for the enforcement of such order upon showing that respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

Source: Laws 1965, c. 276, § 20, p. 795; Laws 1977, LB 161, § 14; Laws 1988, LB 352, § 90.

Cross References

Administrative Procedure Act, see section 84-920.

- 1. Standard of review
- 2. Attorney's fees
- 3. Miscellaneous

1. Standard of review

On appeal to the district court from an order of the Nebraska Equal Opportunity Commission, the review is by trial de novo upon the record. On further appeal to the Supreme Court, the district court's findings will not be disturbed if they are supported by substantial evidence. *Hinzman v. Richman Gordman*, 219 Neb. 875, 367 N.W.2d 131 (1985).

On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

On appeal to the district court from an order of the Nebraska Equal Opportunity Commission, the review is by trial de novo upon the record. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 846 (1984).

The standard of review to be applied in review by the district court and the Supreme Court of an order entered by the Nebraska Equal Opportunity Commission is whether the findings of the commission in support of such order are unreason-

able or arbitrary or not supported by a preponderance of the evidence. The court shall affirm if the finding is supported by substantial evidence on the record. *Nebraska P.P. Dist. v. Lacy*, 215 Neb. 462, 339 N.W.2d 286 (1983).

On appeal to district court from an order of the Equal Opportunity Commission, review is de novo upon the record to determine whether the order was based upon substantial evidence. *Farmer v. Richman Gordman Stores, Inc.*, 203 Neb. 222, 278 N.W.2d 332 (1979).

Upon an appeal to the district court from an order of the Equal Opportunity Commission, the district court review is de novo on the record. *Snygg v. City of Scottsbluff Police Dept.*, 201 Neb. 16, 266 N.W.2d 76 (1978).

2. Attorney's fees

The plain meaning of subsection (6) of this section is to permit an award of attorney fees only where they were necessarily incurred in determining an issue over which the district court had jurisdiction. *Nebraska Dept. of Correctional Servs. v. Carroll*, 222 Neb. 307, 383 N.W.2d 740 (1986).

While awarding of attorney fees under this section is discretionary with the district court, absent special circumstances, the failure to award such fees is an abuse of discretion. *Williams v. Goodyear Tire & Rubber Co.*, 219 Neb. 748, 366 N.W.2d 132 (1985).

Unless there are special circumstances a prevailing plaintiff, under the Nebraska Fair Employment Practice Act, should be awarded a reasonable attorney fee for all stages of the proceedings. In any action or proceeding under the Nebraska Fair Employment Practice Act, the district court, in its discretion, may allow the prevailing party a reasonable attorney fee. *Airport Inn v. Nebraska Equal Opp. Comm.*, 217 Neb. 852, 353 N.W.2d 727 (1984).

This section does not provide for an attorney fee for services provided in appeals taken from the district court. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

3. Miscellaneous

This section requires the filing of a petition and a certified copy of the transcript of proceedings before the Nebraska Equal Opportunity Commission within 30 days from the date of the NEOC's final order in order to confer jurisdiction on the district

court. *Transcon Lines, Inc., v. O'Neal*, 230 Neb. 31, 429 N.W.2d 718 (1988).

There has been no entry of the order of the Nebraska Equal Opportunity Commission until the date that written evidence of that order has been prepared, authoritatively signed, and placed of record in the public files of such commission. *Lincoln Co. Sheriff's Office v. Horne*, 221 Neb. 867, 381 N.W.2d 159 (1986).

Substantial compliance with this section will be adequate to meet the requirements thereof. Held facts of this case constituted substantial compliance. *Ranger Division v. Bayne*, 214 Neb. 251, 333 N.W.2d 891 (1983).

Appeal in proceedings under this act are governed by specific provision herein for manner and scope of appeal, rather than the appeal provisions of the Administrative Procedure Act, sections 84-901 to 84-919. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974).

Since award of back pay by commission would be equivalent to similar award in federal court and appeal is provided for, state administrative remedy is adequate. *Gilliam v. City of Omaha*, 331 F.Supp. 4 (D. Neb. 1971).

48-1120.01 Action in district court; deadline; notice by commission.

The deadline for filing an action directly in the district court is ninety days after the complainant receives notice of the last action the commission will take on the complaint or charge. When entering the last action on the complaint or charge, the commission shall issue written notice of such ninety-day deadline to the complainant by certified mail, return receipt requested. The last action on the complaint or charge includes the issuance of the final order after hearing, the determination of reasonable cause or no reasonable cause, and any other administrative action which ends the commission's involvement with the complaint or charge.

Source: Laws 2003, LB 701, § 1.

48-1121 Posting excerpts of law.

Every employer, employment agency, and labor organization subject to the Nebraska Fair Employment Practice Act shall post in a conspicuous place or places on his, her, or its premises a notice to be prepared or approved by the commission which shall set forth excerpts of the act and such other relevant information which the commission deems necessary to explain the act.

Source: Laws 1965, c. 276, § 21, p. 796; Laws 1993, LB 360, § 16.

48-1122 Contracts with state and political subdivisions; requirements.

Every contract to which the state or any of its political subdivisions is a party shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

Source: Laws 1965, c. 276, § 22, p. 797; Laws 1973, LB 266, § 13.

48-1123 Violations; penalty.

Any person, employer, labor organization, or employment agency who or which willfully resists, prevents, impedes, or interferes with the commission or any of its members or representatives in the performance of duty under the Nebraska Fair Employment Practice Act or willfully violates an order of the

commission shall be guilty of a Class III misdemeanor. Procedure for the review of the order shall not be deemed to be such willful conduct.

Source: Laws 1965, c. 276, § 23, p. 797; Laws 1977, LB 40, § 302; Laws 1993, LB 360, § 17.

48-1124 Construction of act.

Nothing contained in the Nebraska Fair Employment Practice Act shall be deemed to repeal any of the provisions of the civil rights law, any other law of this state, or any municipal ordinance relating to discrimination because of race, creed, color, religion, sex, disability, or national origin.

Source: Laws 1965, c. 276, § 24, p. 797; Laws 1973, LB 266, § 14; Laws 1993, LB 360, § 18.

48-1125 Act, how cited.

Sections 48-1101 to 48-1125 shall be known and may be cited as the Nebraska Fair Employment Practice Act.

Source: Laws 1965, c. 276, § 26, p. 797; Laws 1993, LB 360, § 19; Laws 2003, LB 701, § 3.

48-1126 State and governmental agencies; suits against.

The state and governmental agencies created by the state may be sued upon claims arising under the Nebraska Fair Employment Practice Act in the same manner as provided by such law for suits against other employers.

Source: Laws 1979, LB 67, § 2; Laws 1983, LB 447, § 74.

Cross References

Nebraska Fair Employment Practice Act, see section 48-1125.

ARTICLE 12

WAGES

(a) MINIMUM WAGES

- Section
- 48-1201. Policy.
- 48-1202. Terms, defined.
- 48-1203. Wages; minimum rate.
- 48-1203.01. Training wage; rate; limitations.
- 48-1204. Repealed. Laws 1987, LB 474, § 3.
- 48-1205. Sections; posting.
- 48-1206. Commissioner of Labor; subpoena records and witnesses; violations; penalty; civil actions.
- 48-1207. Bargaining collectively; sections not applicable.
- 48-1208. Other laws; applicability of sections.
- 48-1209. Act, how cited.
- 48-1209.01. Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.

(b) SEX DISCRIMINATION

- 48-1210. Repealed. Laws 1969, c. 389, § 10.
- 48-1211. Repealed. Laws 1969, c. 389, § 10.
- 48-1212. Repealed. Laws 1969, c. 389, § 10.
- 48-1213. Repealed. Laws 1969, c. 389, § 10.
- 48-1214. Repealed. Laws 1969, c. 389, § 10.

- Section
 48-1215. Repealed. Laws 1969, c. 389, § 10.
 48-1216. Repealed. Laws 1969, c. 389, § 10.
 48-1217. Repealed. Laws 1969, c. 389, § 10.
 48-1218. Repealed. Laws 1969, c. 389, § 10.
 48-1219. Discriminatory wage practices based on sex; policy.
 48-1220. Terms, defined.
 48-1221. Prohibited acts.
 48-1222. Equal Opportunity Commission; powers.
 48-1223. Violation of sections; damages; attorney's fees; agreements, effect; action; order of court.
 48-1224. Limitation of action.
 48-1225. Records; employer keep and maintain; contents.
 48-1226. Copy or abstract of sections; post; furnish employers.
 48-1227. Violations; penalty.
 48-1227.01. Suits against governmental bodies; authorized.

(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.
 48-1230.01. Employer; unpaid wages constituting commissions; duties.
 48-1231. Employee; claim for wages or unlawful retaliation or discrimination; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.
 48-1232. Employee; claim; judgment; additional recovery from employer; when.
 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

48-1201 Policy.

It is declared to be the policy of this state (1) to establish a minimum wage for all workers at levels consistent with their health, efficiency and general well-being, and (2) to safeguard existing minimum wage compensation standards which are adequate to maintain the health, efficiency and general well-being of workers against the unfair competition of wage and hours standards which do not provide adequate standards of living.

Source: Laws 1967, c. 285, § 1, p. 773.

Parties may not waive the protections afforded under the Wage and Hour Act. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

48-1202 Terms, defined.

For purposes of the Wage and Hour Act, unless the context otherwise requires:

- (1) Employ shall include to permit to work;
- (2) Employer shall include any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing four or more employees at any one time except for seasonal employment of not more than twenty weeks in any calendar year,

acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state, or any political subdivision thereof;

(3) Employee shall include any individual employed by any employer but shall not include:

- (a) Any individual employed in agriculture;
- (b) Any individual employed as a baby-sitter in or about a private home;
- (c) Any individual employed in a bona fide executive, administrative, or professional capacity or as a superintendent or supervisor;
- (d) Any individual employed by the United States or by the state or any political subdivision thereof;
- (e) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization when the employer-employee relationship does not in fact exist or when the services rendered to such organization are on a voluntary basis;
- (f) Apprentices and learners otherwise provided by law;
- (g) Veterans in training under supervision of the United States Department of Veterans Affairs;
- (h) A child in the employment of his or her parent or a parent in the employment of his or her child; or
- (i) Any person who, directly or indirectly, is receiving any form of federal, state, county, or local aid or welfare and who is physically or mentally disabled and employed in a program of rehabilitation, who shall receive a wage at a level consistent with his or her health, efficiency, and general well-being;

(4) Occupational classification shall mean a classification established by the Dictionary of Occupational Titles prepared by the United States Department of Labor; and

(5) Wages shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash.

Source: Laws 1967, c. 285, § 2, p. 773; Laws 1969, c. 408, § 1, p. 1411; Laws 1973, LB 343, § 1; Laws 1991, LB 2, § 8; Laws 1991, LB 297, § 1; Laws 1993, LB 121, § 298.

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.

Under subsection (2) of this section, an employer is not required to notify an employee that he or she will be compensated as a tipped employee. Instead, the employer only needs to prove the employee received tips sufficient to compensate the employee at a rate greater than or equal to the minimum wage. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

48-1203.01 Training wage; rate; limitations.

An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

Source: Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.

48-1204 Repealed. Laws 1987, LB 474, § 3.

48-1205 Sections; posting.

Every employer subject to the provisions of sections 48-1201 to 48-1209 shall keep a summary of sections 48-1201 to 48-1209, furnished by the Commissioner of Labor without charge, posted in a conspicuous place on or about the premises wherein any person subject to the provisions of sections 48-1201 to 48-1209 is employed.

Source: Laws 1967, c. 285, § 5, p. 775.

48-1206 Commissioner of Labor; subpoena records and witnesses; violations; penalty; civil actions.

(1) The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of section 48-1203 and this section. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the Wage and Hour Act.

(2) Any employer who violates any of the provisions of section 48-1203 shall be guilty of a Class IV misdemeanor.

(3) It shall be the duty of the county attorney for the county in which any violation of the Wage and Hour Act occurs to prosecute the same in the district court in the county where the offense occurred.

(4) Any employer who violates any provision of section 48-1203 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be.

(5) Action to recover unpaid minimum wages as provided in subsection (4) of this section may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in which any action is brought under this subsection shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney's fees to be paid by the defendant. In any proceedings brought pursuant to this subsection, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

Source: Laws 1967, c. 285, § 6, p. 775; Laws 1973, LB 343, § 4; Laws 1977, LB 40, § 303; Laws 1987, LB 474, § 2.

48-1207 Bargaining collectively; sections not applicable.

Nothing in sections 48-1201 to 48-1209 shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of sections 48-1201 to 48-1209.

Source: Laws 1967, c. 285, § 7, p. 776.

48-1208 Other laws; applicability of sections.

Any standards relating to minimum wage, maximum hours, or other working conditions in effect on October 23, 1967, by or under any other law of this state, which are more favorable to employees than those applicable to such employees under the provisions of sections 48-1201 to 48-1209, shall not be deemed to be amended, rescinded, or otherwise affected by sections 48-1201 to 48-1209 but shall continue in full force and effect.

Source: Laws 1967, c. 285, § 8, p. 776.

48-1209 Act, how cited.

Sections 48-1201 to 48-1209 shall be known and may be cited as the Wage and Hour Act.

Source: Laws 1967, c. 285, § 9, p. 776; Laws 1991, LB 297, § 4.

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

48-1210 Repealed. Laws 1969, c. 389, § 10.

48-1211 Repealed. Laws 1969, c. 389, § 10.

48-1212 Repealed. Laws 1969, c. 389, § 10.

48-1213 Repealed. Laws 1969, c. 389, § 10.

48-1214 Repealed. Laws 1969, c. 389, § 10.

48-1215 Repealed. Laws 1969, c. 389, § 10.

48-1216 Repealed. Laws 1969, c. 389, § 10.

48-1217 Repealed. Laws 1969, c. 389, § 10.

48-1218 Repealed. Laws 1969, c. 389, § 10.

48-1219 Discriminatory wage practices based on sex; policy.

(1) The practice of discriminating on the basis of sex by paying wages to employees of one sex at a lesser rate than the rate paid to employees of the opposite sex for comparable work on jobs which have comparable requirements:

- (a) Unjustly discriminates against the person receiving the lesser rate;
- (b) Leads to low worker morale, high turnover, and frequent labor unrest;
- (c) Discourages workers paid at the lesser wage rates from training for higher level jobs;
- (d) Curtails employment opportunities, decreases workers' mobility, and increases labor costs;
- (e) Impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families;
- (f) Prevents optimum utilization of the state's available labor resources; and
- (g) Threatens the well-being of citizens of this state, and adversely affects the general welfare.

(2) It is therefor declared to be the policy of this state through exercise of its police power to correct and, as rapidly as possible, to eliminate discriminatory wage practices based on sex.

Source: Laws 1969, c. 389, § 1, p. 1365.

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.

48-1221 Prohibited acts.

(1) No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in such establishment at a wage rate less than the rate at which the employer pays any employee of the opposite sex in such establishment for equal work on jobs which require equal skill, effort and responsibility under similar working conditions. Wage differentials are not within this prohibition where such payments are made pursuant to: (a) An established seniority system; (b) a merit increase system; or (c) a system which measures earning by quantity or quality of production or any factor other than sex.

(2) An employer who is paying a wage differential in violation of the provisions of sections 48-1219 to 48-1227 shall not, in order to comply with it, reduce the wage rates of any employee.

(3) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of the provisions of sections 48-1219 to 48-1227.

(4) No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of the provisions of sections 48-1219 to 48-1227.

Source: Laws 1969, c. 389, § 3, p. 1366.

When bringing a claim of wage discrimination based on sex under subsection (1) of this section, a plaintiff must first establish a prima facie case by showing by a preponderance of the evidence that (1) the plaintiff was paid less than a person of the opposite sex employed in the same establishment; (2) for equal work on jobs requiring equal skill, effort, and responsibility; (3)

which were performed under similar working conditions. If a plaintiff establishes a prima facie case of wage discrimination based on sex, the burden then shifts to the defendant to prove one of the affirmative defenses set forth in subsection (1) of this section. *Knapp v. Ruser*, 297 Neb. 639, 901 N.W.2d 31 (2017).

48-1222 Equal Opportunity Commission; powers.

(1) The commission shall have the power and the duty to carry out the provisions of sections 48-1219 to 48-1227.

(2) For this purpose, the commission shall have the power to enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by him are engaged, to question such person, and to obtain such other information as is reasonably necessary to the administration and enforcement of the provisions of sections 48-1219 to 48-1227.

(3) The commission shall have power to examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to this section. Witnesses summoned by the commission shall be paid the same fees as are allowed witnesses attending the district court. In the event of the failure of a person to attend, testify or produce documents under or in response to a subpoena, the district court for the county in which the appearance is requested on application of the commission may issue an order requiring such person to appear before the commission, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(4) The commission is authorized to endeavor to eliminate pay practices unlawful under the provisions of sections 48-1219 to 48-1227, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under the provisions of sections 48-1219 to 48-1227.

(5) The commission shall have power to issue such regulations, not inconsistent with the purpose of sections 48-1219 to 48-1227, as it deems necessary or appropriate to carry out its provisions.

Source: Laws 1969, c. 389, § 4, p. 1367.

Cross References

For witness fees in district court, see section 33-139.

48-1223 Violation of sections; damages; attorney's fees; agreements, effect; action; order of court.

(1) Any employer who violates the provisions of section 48-1221 shall be liable to the employee or employees affected in the amount of their unpaid wages, and, in instances of willful violation, in employee suits under subsection (2) of this section up to an additional equal amount as liquidated damages.

(2) Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(3) No agreement by any such employee to work for less than the wage to which such employee is entitled under the provisions of sections 48-1219 to 48-1227 shall be a bar to any such action or to a voluntary wage restitution of the full amount due under the provisions of sections 48-1219 to 48-1227.

(4) At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under the provisions of sections 48-1219 to 48-1227, the commission may bring any legal action necessary on behalf of the employee to collect such claim for unpaid wages. The commission shall not be required to pay the filing fee, or other costs, in connection with such action. The commission shall have power to join various claims against the employer in one cause of action.

(5) In proceedings under the provisions of this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of the provisions of sections 48-1219 to 48-1227.

(6) The commission shall have power to petition any court of competent jurisdiction to restrain violations of section 48-1221 and for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of sections 48-1219 to 48-1227.

Source: Laws 1969, c. 389, § 5, p. 1368.

48-1224 Limitation of action.

Court action under the provisions of sections 48-1219 to 48-1227 may be commenced no later than four years after the cause of action accrues.

Source: Laws 1969, c. 389, § 6, p. 1369.

48-1225 Records; employer keep and maintain; contents.

Every employer subject to the provisions of sections 48-1219 to 48-1227 shall make, keep, and maintain such records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by him, and shall preserve such records for such periods of time, and shall make such reports therefrom as the commission shall prescribe.

Source: Laws 1969, c. 389, § 7, p. 1369.

48-1226 Copy or abstract of sections; post; furnish employers.

Every person subject to the provisions of sections 48-1219 to 48-1227 shall keep an abstract or copy of sections 48-1219 to 48-1227 posted in a conspicuous place in or about the premises wherein any employee is employed. Employers shall be furnished copies of abstracts of sections 48-1219 to 48-1227 by the state on request without charge.

Source: Laws 1969, c. 389, § 8, p. 1369.

48-1227 Violations; penalty.

(1) Any person who violates any provision of sections 48-1219 to 48-1227, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, the commission, or any other person, or has instituted, or caused to be instituted any proceeding under or related to sections 48-1219 to 48-1227, or has testified or

is about to testify in any such proceeding, shall be guilty of a Class III misdemeanor.

(2) Any employer who violates the provisions of sections 48-1219 to 48-1227 by failing to keep the records required hereunder, or to furnish such records to the commission upon request, or who falsifies such records, or who hinders, delays, or otherwise interferes with the commission in the performance of its duties in the enforcement of the provisions of sections 48-1219 to 48-1227, or refuses official entry into any place of employment which it is authorized by the provisions of sections 48-1219 to 48-1227 to inspect, shall be guilty of a Class V misdemeanor.

Source: Laws 1969, c. 389, § 9, p. 1369; Laws 1977, LB 40, § 304.

48-1227.01 Suits against governmental bodies; authorized.

The state, governmental agencies, and political subdivisions may be sued upon claims arising under sections 48-1219 to 48-1227 in the same manner as provided by such sections for suits against other employers.

Source: Laws 1983, LB 424, § 6.

(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.

The Nebraska Wage Payment and Collection Act does not prohibit employers from discharging employees, and it does not provide employees with any substantive rights. *Coffey v. Planet Group*, 287 Neb. 834, 845 N.W.2d 255 (2014).

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Nebraska Wage Payment and Collection Act does not apply to severance payment which becomes due upon termination of

employment. *Babb v. United Food & Commercial Workers Local 271*, 233 Neb. 826, 448 N.W.2d 168 (1989).

If an employer and employee agree upon a bonus to be paid upon certain conditions and the conditions are fulfilled, the bonus is wages under the Nebraska Wage Payment and Collection Act. *Knutson v. Snyder Industries, Inc.*, 231 Neb. 374, 436 N.W.2d 496 (1989).

The Nebraska Wage Payment and Collection Act applies only to actions to recover wages due an employee for labor or services performed for an employer. *Heimbouch v. Victorio Ins. Serv., Inc.*, 220 Neb. 279, 369 N.W.2d 620 (1985).

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 sub-

division 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.

- 1. Vacation and sick leave
- 2. Consideration as wages
- 3. Miscellaneous

1. Vacation and sick leave

Former employees were not entitled to paid time off compensation under the Nebraska Wage Payment and Collection Act where they did not meet the written employment agreement's stated conditions to earn paid time off. *Drought v. Marsh*, 304 Neb. 860, 937 N.W.2d 229 (2020).

Under the 2007 amendments to this section, unused "paid time off" hours constitute unused vacation leave when the only stipulated condition for earning the hours is the rendering of services and an employee has an absolute right to take this time off for any purpose that he or she wishes. In that circumstance, an employee's unused paid time off hours are wages that an employer must pay upon separation of employment. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 277 Neb. 359, 773 N.W.2d 348 (2009).

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).

Under the plain language of subsection (4) of this section, unused sick leave is not a part of wages payable to a separating

employee unless there is a specific agreement otherwise. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).

Accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).

2. Consideration as wages

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

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

A payment will be considered a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

Payments pursuant to a severance agreement that were not earned and did not accrue through continued employment are not compensation for labor or services rendered, and therefore, the employee is not entitled to attorney fees. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).

Pursuant to subsection (3) of this section, deferred compensation constitutes wages under the Nebraska Wage Payment and Collection Act. *Sindelar v. Canada Transport, Inc.*, 246 Neb. 559, 520 N.W.2d 203 (1994).

Where an employment contract provides for the sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Brown v. Clayton Brokerage Co.*, 238 Neb. 646, 472 N.W.2d 381 (1991).

Where an employment agreement provides for sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Waite v. A. S. Battiatto Co.*, 238 Neb. 151, 469 N.W.2d 766 (1991).

An employee's share of the profits of his employer under a profit-sharing plan can be wages within the meaning of subsection (3) of this section. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).

Subdivision (4) of this section provides that the term "wages" includes orders on file with the employer at the time of termination of employment. Thus, an employment agreement policy which clearly conflicts with such definition of wages, even though said policy is common within the industry, is void because it is prohibited by the Nebraska Wage Payment and Collection Act. *Sanford v. Clear Channel Broadcasting*, 14 Neb. App. 908, 719 N.W.2d 312 (2006).

Overtime wages can be claimed under the Nebraska Wage Payment and Collection Act only if those overtime wages were previously agreed to by the employer and the employee. Nonetheless, even in the absence of a previous agreement concerning overtime compensation, compensation for overtime can be claimed under the federal Fair Labor Standards Act for hours worked in excess of 40 during a given week. *Freeman v. Central States Health & Life Co.*, 2 Neb. App. 803, 515 N.W.2d 131 (1994).

3. Miscellaneous

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Statutory definitions applied to facts to reach conclusion that route salesman is an employee within the meaning of the Nebraska Wage Payment and Collection Act. *Rudolf v. Tombstone Pizza Corp.*, 214 Neb. 276, 333 N.W.2d 673 (1983).

District court erred in finding that plaintiffs were not employees under the definition provided by this section. *Tracy v. Tracy*, 7 Neb. App. 143, 581 N.W.2d 96 (1998).

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.

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Application of the Wage Payment and Collection Act does not affect the need to satisfy the requisites of pursuing a claim against a city of the metropolitan class. *Thompson v. City of Omaha*, 235 Neb. 346, 455 N.W.2d 538 (1990).

48-1230.01 Employer; unpaid wages constituting commissions; duties.

Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

Source: Laws 2007, LB255, § 4.

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.

Cross References

Nebraska Fair Employment Practice Act, see section 48-1125.

An employee was not entitled to relief under this section when the employer had never provided the employee with compensation and there was no provision in an employment agreement providing for compensation or a regular date of payment. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

A court has discretion to award attorney fees higher than the statutory minimum required under this section, and an award of fees above the statutory minimum does not depend upon the presence of employer's unreasonable defenses or vexatious counterclaims. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

An appellate court reviews a lower court's award of attorney fees under this section for an abuse of discretion. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).

A party has no viable claim to a wage that has not yet been received. *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).

In a wage claim brought under section 15-841 against a city of the primary class, there is nothing in the plain language of

this section that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. *Rauscher v. City of Lincoln*, 269 Neb. 267, 691 N.W.2d 844 (2005).

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

Employers will not be awarded attorney fees under the Nebraska Wage Payment and Collection Act if the employer has not tendered an amount to the employee within 30 days of the employee's regular payday. *Brockley v. Lozier Corp.*, 241 Neb. 449, 488 N.W.2d 556 (1992).

Unpaid wages means wages which are not paid within 30 days of the regular payday designated or agreed upon. *Polly v. Ray D. Hilderman & Co.*, 225 Neb. 662, 407 N.W.2d 751 (1987).

48-1232 Employee; claim; judgment; additional recovery from employer; when.

If an employee establishes a claim and secures judgment on such claim under subsection (1) of section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5; Laws 2010, LB884, § 4.

It is in the court's discretion whether to order an employer to pay to the common schools fund an amount equal to the judgment. There was a reasonable dispute concerning whether payment for unused vacation leave was due to the employees. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).

The amount of penalty ordered to be paid to a fund to be distributed to the common schools of the state is a matter left to the discretion of the trial court, subject to the limitations prescribed by statute. *Kinney v. H.P. Smith Ford*, 266 Neb. 591, 667 N.W.2d 529 (2003).

The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).

It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. This section should not be invoked where there is a reasonable dispute as to the fact that wages are owed or as to the amount of the wages. *Morris v. Rochester Midland Corp.*, 259 Neb. 870, 612 N.W.2d 921 (2000).

It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).

The award of an attorney fee of not less than twenty-five percent of the unpaid wages is mandatory under this act. *Barbour v. Jenson Commercial Distributing Co.*, 212 Neb. 512, 323 N.W.2d 824 (1982).

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.

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.

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 website 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.

ARTICLE 13

EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKERS

- Section
- 48-1301. Repealed. Laws 2009, LB 549, § 53.
- 48-1302. Repealed. Laws 2009, LB 549, § 53.
- 48-1303. Repealed. Laws 2009, LB 549, § 53.
- 48-1304. Repealed. Laws 2009, LB 549, § 53.

§ 48-1301

LABOR

Section

- 48-1305. Repealed. Laws 2009, LB 549, § 53.
- 48-1306. Repealed. Laws 2009, LB 549, § 53.
- 48-1307. Repealed. Laws 1981, LB 545, § 52.
- 48-1308. Repealed. Laws 1980, LB 663, § 2.
- 48-1309. Repealed. Laws 2009, LB 549, § 53.

48-1301 Repealed. Laws 2009, LB 549, § 53.

48-1302 Repealed. Laws 2009, LB 549, § 53.

48-1303 Repealed. Laws 2009, LB 549, § 53.

48-1304 Repealed. Laws 2009, LB 549, § 53.

48-1305 Repealed. Laws 2009, LB 549, § 53.

48-1306 Repealed. Laws 2009, LB 549, § 53.

48-1307 Repealed. Laws 1981, LB 545, § 52.

48-1308 Repealed. Laws 1980, LB 663, § 2.

48-1309 Repealed. Laws 2009, LB 549, § 53.

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)(a) 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 plan of deferred compensation may provide for the deferral of an individual's compensation on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials except as otherwise provided in this section.

(b) This section shall not authorize an entity excepted from this section pursuant to subdivision (1)(a) of this section to modify a plan of deferred compensation or establish a separate plan of deferred compensation. This section shall not require either the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems to modify a plan of deferred compensation established pursuant to sections 84-1504 to 84-1506 to allow for after-tax Roth contributions pursuant to a qualified Roth contributions program under section 402A of the Internal Revenue Code.

(2) All compensation to be deferred under this section 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 authorized under this section 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, including an individual's compensation deferred on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code, 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)(a) Any sum so deferred on a pretax basis shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual at the time of deferral.

(b) Any sum so deferred on an after-tax Roth contribution basis pursuant to a qualified Roth contribution program under section 402A of the Internal Revenue Code shall be included in the computation of any federal or state taxes withheld on behalf of any such individual at the time of deferral.

(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, including compensation deferred on either a pretax basis or an after-tax Roth contribution basis under a qualified Roth contribution program pursuant to section 402A of the Internal Revenue Code, 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 or the Nebraska Public Employees Retirement Systems pursuant to sections 84-1504 to 84-1506. Nothing in this subsection shall require a plan of deferred compensation that is administered by the Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems pursuant to sections 84-1504 to 84-1506 to provide for the ability of an individual to defer compensation on an after-tax Roth contribution basis pursuant to a qualified Roth contribution program under section 402A of the Internal Revenue Code.

(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; Laws 2021, LB209, § 1.
Effective date August 28, 2021.

Cross References

Nebraska Public Employees Retirement Systems, see section 84-1503.
Public Employees Retirement Board, see sections 84-1501 to 84-1513.

**ARTICLE 15
SHELTERED WORKSHOPS**

- Section
48-1501. Sheltered workshop, defined.
48-1502. Sheltered workshop; negotiate contracts; conditions.
48-1503. Governmental subdivisions; direct negotiation for products and services; considerations; procedures; contract requirements.
48-1504. Conduct prohibited.
48-1505. Violations; penalty.
48-1506. Home rule charter cities; direct negotiation for products and services.

48-1501 Sheltered workshop, defined.

As used in sections 48-1501 to 48-1506, unless the context otherwise requires, sheltered workshop shall mean a facility in Nebraska operated by a public agency or a private nonprofit corporation organized for the primary purpose of employment of and service to physically or mentally disabled clients in a program of rehabilitation. Such facility shall be certified as a sheltered workshop, a work activity center, or an equivalent by an independent accrediting agency and comply with the Fair Labor Standards Amendments of 1966, Public Law No. 89-601, 80 Stat. 830, as a sheltered workshop or a work activity center.

Source: Laws 1984, LB 540, § 1; Laws 1997, LB 238, § 5.

48-1502 Sheltered workshop; negotiate contracts; conditions.

To negotiate contracts pursuant to sections 48-1501 to 48-1506, a sheltered workshop shall:

- (1) Employ a minimum of ten physically or mentally disabled clients;
- (2) Provide disabled clients with a wage at a level consistent with their health, efficiency, and general well-being as required by Chapter 48, article 12;
- (3) Provide a controlled work environment and a program designed to enable the disabled client enrolled in the program to progress toward normal living and develop, as far as possible, his or her capacity, performance, and relationship with other persons; and
- (4) Provide a work experience sufficiently diverse to accommodate the needs of each disabled client enrolled in the program.

Source: Laws 1984, LB 540, § 2; Laws 1997, LB 238, § 6.

48-1503 Governmental subdivisions; direct negotiation for products and services; considerations; procedures; contract requirements.

Whenever the State of Nebraska, any department or any agency thereof, or any county, municipality, school district, township, or other governmental subdivision is required to advertise for bids pursuant to any statutes of the State of Nebraska, it may directly negotiate and contract for products and services with a sheltered workshop. Direct negotiation for products and services, notwithstanding the procedures for public lettings pursuant to sections 73-101 to 73-106, may be conducted if the department, agency, or subdivision gives consideration to the following elements:

- (1) Whether the product or service contracted for is supplied by the sheltered workshop at a fair market price;
- (2) Whether the product or service meets the specifications of the department, agency, or subdivision;
- (3) The ability, capacity, and skill of the sheltered workshop to perform the contract required;
- (4) The character, integrity, reputation, judgment, experience, and efficiency of the sheltered workshop;

- (5) Whether the sheltered workshop can perform the contract within the time specified;
- (6) The quality of performance of previous contracts;
- (7) The previous and existing compliance by the sheltered workshop with laws relating to the contract;
- (8) The life-cost of the product or service in relation to the purchase price and specific use of the item; and
- (9) The performance of the product or service, taking into consideration any commonly accepted tests and standards of product usability and user requirements.

An agency, subdivision, or city under home rule charter shall furnish prior public notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by any sheltered workshop interested in contracting for such work.

Any contract negotiated pursuant to this section shall be in writing and shall be made available to the public by the purchasing party upon request. Such a contract shall include the purchase price, the quantity of product or service purchased, and the time period for which the product or service will be provided.

Source: Laws 1984, LB 540, § 3.

48-1504 Conduct prohibited.

No person shall engage in, aid, or abet any person in any conduct, fraudulent activity, or misrepresentation of the facts in violation of sections 48-1501 to 48-1503.

Source: Laws 1984, LB 540, § 4.

48-1505 Violations; penalty.

A person violating any provision of sections 48-1501 to 48-1504 shall be guilty of a Class IV misdemeanor. In the case of a continuing violation, each day shall constitute a separate offense.

Source: Laws 1984, LB 540, § 13.

48-1506 Home rule charter cities; direct negotiation for products and services.

Notwithstanding the provisions for public lettings required by a city home rule charter adopted pursuant to Article XI of the Constitution, the governing body of any such city may negotiate directly with a sheltered workshop pursuant to section 48-1503.

Source: Laws 1984, LB 540, § 5.

ARTICLE 16

WORKFORCE INVESTMENT

- Section
 48-1601. Repealed. Laws 2001, LB 193, § 15.
 48-1602. Repealed. Laws 2001, LB 193, § 15.
 48-1603. Repealed. Laws 2001, LB 193, § 15.
 48-1604. Repealed. Laws 2001, LB 193, § 15.

- Section
 48-1605. Repealed. Laws 2001, LB 193, § 15.
 48-1606. Repealed. Laws 2001, LB 193, § 15.
 48-1607. Repealed. Laws 2001, LB 193, § 15.
 48-1608. Repealed. Laws 2001, LB 193, § 15.
 48-1609. Repealed. Laws 2001, LB 193, § 15.
 48-1610. Repealed. Laws 2001, LB 193, § 15.
 48-1611. Repealed. Laws 2001, LB 193, § 15.
 48-1612. Repealed. Laws 2001, LB 193, § 15.
 48-1613. Repealed. Laws 2001, LB 193, § 15.
 48-1614. Repealed. Laws 2001, LB 193, § 15.
 48-1615. Repealed. Laws 2001, LB 193, § 15.
 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.

- 48-1601 Repealed. Laws 2001, LB 193, § 15.**
48-1602 Repealed. Laws 2001, LB 193, § 15.
48-1603 Repealed. Laws 2001, LB 193, § 15.
48-1604 Repealed. Laws 2001, LB 193, § 15.
48-1605 Repealed. Laws 2001, LB 193, § 15.
48-1606 Repealed. Laws 2001, LB 193, § 15.
48-1607 Repealed. Laws 2001, LB 193, § 15.
48-1608 Repealed. Laws 2001, LB 193, § 15.
48-1609 Repealed. Laws 2001, LB 193, § 15.
48-1610 Repealed. Laws 2001, LB 193, § 15.
48-1611 Repealed. Laws 2001, LB 193, § 15.
48-1612 Repealed. Laws 2001, LB 193, § 15.
48-1613 Repealed. Laws 2001, LB 193, § 15.
48-1614 Repealed. Laws 2001, LB 193, § 15.
48-1615 Repealed. Laws 2001, LB 193, § 15.
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

- 48-1701. Act, how cited.
 48-1702. Terms, defined.
 48-1703. Act; exclusions.
 48-1704. Farm labor contractor; license; form; contents.
 48-1705. Applicant; proof of financial responsibility; payment of wage claims; procedure.
 48-1706. Application fee.
 48-1707. Repealed. Laws 2016, LB270, § 7.
 48-1708. Department; adopt rules and regulations.
 48-1709. Notice; posting.
 48-1710. Department; licensing duties; license; protest; term; renewal; fee.
 48-1711. Farm labor contractor; duties.
 48-1712. Farm labor contractor; applicant for license; prohibited acts.
 48-1713. License; revocation, suspension, refuse renewal; when.
 48-1714. Violations; prohibited acts; penalty.

48-1701 Act, how cited.

Sections 48-1701 to 48-1714 shall be known and may be cited as the Farm Labor Contractors Act.

Source: Laws 1987, LB 344, § 1.

48-1702 Terms, defined.

For purposes of the Farm Labor Contractors Act, unless the context otherwise requires:

(1) Department means the Department of Labor;

(2) Farm labor contractor means any individual, partnership, limited liability company, corporation, or cooperative association, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who for any money or other valuable consideration paid or promised to be paid performs any farm labor contracting activity;

(3) Farm labor contracting activity means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker;

(4) Non-English-speaking worker has the same meaning as non-English-speaking employee in section 48-2208; and

(5) Worker means a person who is employed or recruited by or who subcontracts with a farm labor contractor.

Source: Laws 1987, LB 344, § 2; Laws 1993, LB 121, § 301; Laws 2002, LB 931, § 1; Laws 2003, LB 418, § 9.

48-1703 Act; exclusions.

The following shall be excluded from the Farm Labor Contractors Act:

(1) Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, cannery, gin, packing shed, or nursery, which is owned and operated exclusively by such individual or a member of his or her immediate family, if such activities are performed only for such operation and exclusively by such individual or family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes;

(2) Any common carrier which would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate or authorization for such purposes from an appropriate local, state, or federal agency;

(3) Any labor organization as defined under applicable state law;

(4) Any nonprofit charitable organization or public or private nonprofit educational institution;

(5) Any custom combine, hay harvesting, sheep shearing, or custom poultry operations;

(6) Employees of exempt employers; and

(7) Any operation which has a workforce comprised of eighty percent or more individuals who are seventeen years of age or younger and which has obtained a certificate of exemption from the department. Any operator who meets the requirements of this subdivision shall be issued such certificate by the department. The department shall adopt and promulgate rules and regulations necessary to carry out this subdivision.

Source: Laws 1987, LB 344, § 3; Laws 1992, LB 452, § 1; Laws 2002, LB 931, § 2.

48-1704 Farm labor contractor; license; form; contents.

(1) Except as otherwise provided by the Farm Labor Contractors Act, no person shall act as a farm labor contractor and engage in farm labor contracting activity unless such person holds a valid license issued by the department.

(2) Farm labor contractor licenses may be issued by the department only as follows:

(a) To an individual operating as a sole proprietor under the person's own name or under an assumed business name registered with the state;

(b) To two or more individuals operating as a partnership under their own names or under an assumed business name registered with the state; and

(c) To a corporation, limited liability company, or cooperative association authorized to do business in Nebraska.

(3) An application for a license as a farm labor contractor shall be sworn to by the applicant and shall be written on a form prescribed by the department. The form shall include, but not be limited to, the following:

(a) The applicant's name and Nebraska address, all other temporary and permanent addresses the applicant uses or knows will be used in the future, and, if the applicant is an individual, the applicant's social security number;

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor, including the license number and state of licensure, the vehicle number, and the name and address of the vehicle owner for all vehicles used for farm labor contracting activity;

(c) Whether or not the applicant was ever denied a license under the Farm Labor Contractors Act or in any other jurisdiction under a similar law or had such a license revoked or suspended; and

(d) The names and addresses of all persons financially interested, whether as partners, limited liability company members, shareholders, associates, or profit sharers in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of such persons was ever denied a license under the act or in any other jurisdiction or had such a license revoked or suspended.

Source: Laws 1987, LB 344, § 4; Laws 1993, LB 121, § 302; Laws 1994, LB 884, § 66; Laws 1997, LB 752, § 128.

48-1705 Applicant; proof of financial responsibility; payment of wage claims; procedure.

(1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of wages of employees and other obligations that may arise under the Farm Labor Contractors Act. The proof shall be in the form of a corporate surety bond of a company licensed to do business in the State of Nebraska, a cash deposit, or a deposit the equivalent of cash. The department shall determine the amount of surety required, except that such amount shall not be less than five thousand dollars. In lieu of such surety, the farm labor contractor may establish a savings account at a financial institution in Nebraska in the name of the Commissioner of Labor as trustee for the employees of the farm labor contractor, and others as their interest may appear, and deliver the evidence of the account and the ability to withdraw funds to the department under terms approved by the department. No farm labor contractor license shall be issued to any applicant who has an unsatisfied final judgment of a court or decision of an administrative agency which would be covered by the bond or deposit required by the act against himself or herself. All corporate surety bonds filed under this section shall be executed to cover liability for a period of one year, during which the bond cannot be canceled or otherwise terminated.

(2) The surety company or the department shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities;

(b) Payment in full of all sums due to each person who presents adequate proof of a claim; and

(c) If there are insufficient funds to pay in full, the person next entitled to payment shall be paid in part.

(3) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been sent by certified mail to the surety or the department within six months from the end of the year for which the bond or deposit has been made.

(4) If the department has not received notice of the claim within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the department shall terminate and surrender any bond or any deposit under control of the department to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(5) The surety bond or deposit shall be payable to the Commissioner of Labor and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees; and

(b) Payment by the farm labor contractor of all sums due to the grower or producer of agricultural commodities for advances made to or on behalf of the farm labor contractor.

Source: Laws 1987, LB 344, § 5.

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.

48-1708 Department; adopt rules and regulations.

The department shall adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of the Farm Labor Contractors Act.

Source: Laws 1987, LB 344, § 8.

48-1709 Notice; posting.

Every farm labor contractor covered by the Farm Labor Contractors Act shall post conspicuously upon the premises where employees working under the contractor are employed, in both English and Spanish, a notice specifying the contractor's compliance with the act and the name and Nebraska address of the

surety on the bond or a notice that a deposit in lieu of the bond has been made with the department together with the address of the department.

Source: Laws 1987, LB 344, § 9.

48-1710 Department; licensing duties; license; protest; term; renewal; fee.

(1) The department shall conduct an investigation of each applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

(2) The department shall issue a license within fifteen days of receipt of the application if the department determines that the applicant is of satisfactory character, competence, and reliability.

(3) Any person may protest the issuance of a license to any applicant at any time by filing with the department a written statement detailing such person's reasons for protesting.

(4) The licensing year shall run from April 1 to the following March 31 and each license shall expire on March 31 following the date of its issuance unless sooner revoked by the department.

(5) A license shall be renewed annually upon payment in advance of the required fee, except that the Commissioner of Labor may require any person seeking renewal to file a new application and may conduct a new investigation of the applicant's character, competence, and reliability and any other matters relating to the applicant's operations as a farm labor contractor.

(6) On its own initiative or upon receipt of a complaint or notice that a farm labor contractor is in violation of the Farm Labor Contractors Act, the department shall conduct an investigation of such contractor.

Source: Laws 1987, LB 344, § 10; Laws 2002, LB 931, § 4.

48-1711 Farm labor contractor; duties.

A farm labor contractor shall:

(1) Carry his or her farm labor contractor license at all times and exhibit such license upon request to any person with whom the contractor intends to deal in his or her capacity as a farm labor contractor;

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made;

(3) Pay or distribute promptly when due to the individuals entitled all money or other things of value entrusted to the farm labor contractor by any person for that purpose;

(4) Comply with the terms and provisions of all legal and valid agreements or contracts entered into by the farm labor contractor;

(5) Comply with all state laws, rules, and regulations relevant to the activity as a farm labor contractor;

(6) Furnish to each worker at the time of hiring, recruiting, soliciting, or supplying such worker, whichever occurs first, a written statement in both English and Spanish which contains a description of:

(a) The method of computing the rate of compensation and the rate of compensation;

- (b) The terms and conditions of any bonus offered and the manner of determining when the bonus is earned;
 - (c) The terms and conditions of any loan made to the worker;
 - (d) The conditions of any housing and health and day care to be provided;
 - (e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates;
 - (f) The terms and conditions under which the worker is furnished clothing or equipment;
 - (g) The name and address of the owner of all operations where the worker will be working; and
 - (h) The worker's rights and remedies in plain and simple language in a form specified by the department;
- (7) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor a written statement itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked, and, if the work is done on a piece basis, the number of pieces completed; and
- (8) Provide a bilingual employee who shall be available at the worksite for each shift a non-English-speaking worker is employed if the farm labor contractor has a workforce of ten or more non-English-speaking workers who speak the same non-English language. The bilingual employee shall be conversant in the non-English language spoken by such workers.

Source: Laws 1987, LB 344, § 11; Laws 2002, LB 931, § 5.

48-1712 Farm labor contractor; applicant for license; prohibited acts.

A farm labor contractor or an applicant for a farm labor contractor license shall not:

- (1) Make any misrepresentation, false statement, or willful concealment in the application for a license or in his or her dealing with workers;
- (2) Solicit or induce or cause to be solicited or induced the violation of an existing contract of employment;
- (3) Assist a person to act in violation of the Farm Labor Contractors Act; and
- (4) By any force, intimidation, or threat, including threat of deportation, induce any worker employed or in a subcontracting relationship to the farm labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

Source: Laws 1987, LB 344, § 12.

48-1713 License; revocation, suspension, refuse renewal; when.

The department may revoke, suspend, or refuse to renew a farm labor contractor license upon the department's own motion or upon complaint by any individual if:

- (1) The licensee or his or her agent has violated or failed to comply with any provision of the Farm Labor Contractors Act;
- (2) The conditions under which the license was issued have changed or no longer exist; or

(3) The licensee’s character, reliability, or competence makes him or her an unfit farm labor contractor.

Source: Laws 1987, LB 344, § 13.

48-1714 Violations; prohibited acts; penalty.

(1) Any person violating section 48-1711 or 48-1712 shall be guilty of a Class II misdemeanor.

(2) Any person who (a) intentionally defaces, alters, or changes a farm labor contractor license, (b) uses the license of another, (c) knowingly permits the use of another person’s license, or (d) acts as a farm labor contractor without a license shall be guilty of a Class II misdemeanor.

Source: Laws 1987, LB 344, § 14.

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.
48-1810.	Repealed. Laws 2007, LB 265, § 38.
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.
- 48-1810 Repealed. Laws 2007, LB 265, § 38.
- 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 19

DRUG AND ALCOHOL TESTING

Section

- 48-1901. Legislative intent.
- 48-1902. Terms, defined.
- 48-1903. Test results; use; requirements.
- 48-1904. Specimens; preservation.
- 48-1905. Specimens; chain of custody.
- 48-1906. Test results; release or disclosure; when.
- 48-1907. Sections, how construed.
- 48-1908. Body fluids; prohibited acts; penalty.
- 48-1909. Body fluids; tampering; penalty.
- 48-1910. Refusal to submit to test; effect.

48-1901 Legislative intent.

It is the intent of the Legislature through sections 48-1901 to 48-1910 to help in the treatment and elimination of drug and alcohol use and abuse in the workplace while protecting the employee’s rights. Nothing in sections 48-1901 to 48-1910 shall be construed to require employers to conduct drug and alcohol testing of their employees nor shall sections 48-1901 to 48-1910 be determinative of the cases or circumstances under which such tests may be given.

Source: Laws 1988, LB 582, § 1.

48-1902 Terms, defined.

For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

- (1) Alcohol means any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor, alcohol, spirits, wine, and beer, as defined in sections 53-103.01, 53-103.03, 53-103.38, and 53-103.42, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol

used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device means intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator means a person who has obtained or been issued a permit pursuant to the department rules and regulations;

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

(5) Department rules and regulations means the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug means any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee means any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer means the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Source: Laws 1988, LB 582, § 2; Laws 1993, LB 370, § 44; Laws 1994, LB 859, § 1; Laws 1996, LB 1044, § 276; Laws 2007, LB296, § 218; Laws 2010, LB861, § 6.

48-1903 Test results; use; requirements.

Any results of any test performed on the body fluid or breath specimen of an employee, as directed by the employer, to determine the presence of drugs or alcohol shall not be used to deny any continued employment or in any disciplinary or administrative action unless the following requirements are met:

(1) A positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other scientific testing technique which has been or may be approved by the department; and

(2) A positive finding of alcohol by preliminary screening procedures is subsequently confirmed by either:

(a) Gas chromatography with a flame ionization detector or other scientific testing technique which has been or may be approved by the department; or

(b) A breath-testing device operated by a breath-testing-device operator. Nothing in this subdivision shall be construed to preclude an employee from immediately requesting further confirmation of any breath-testing results by a blood sample if the employee voluntarily submits to give a blood sample taken by qualified medical personnel in accordance with the rules and regulations adopted and promulgated by the department. If the confirmatory blood test results do not confirm a violation of the employer's work rules, any disciplinary or administrative action shall be rescinded.

Except for a confirmatory breath test as provided in subdivision (2)(b) of this section, all confirmatory tests shall be performed by a clinic, hospital, or laboratory which is certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a.

Source: Laws 1988, LB 582, § 3; Laws 2000, LB 1115, § 5.

48-1904 Specimens; preservation.

Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, all specimens which result in a finding of drugs or alcohol shall be refrigerated and preserved in a sufficient quantity for retesting for a period of at least one hundred eighty days.

Source: Laws 1988, LB 582, § 4.

48-1905 Specimens; chain of custody.

Except for breath test specimens as provided in subdivision (2)(b) of section 48-1903, a written record of the chain of custody of the specimen shall be maintained from the time of the collection of the specimen until the specimen is no longer required.

Source: Laws 1988, LB 582, § 5.

48-1906 Test results; release or disclosure; when.

The employer or its, his, or her agents shall not release or disclose the test results to the public, except that such results shall be released as required by law or to the employee upon request. Test results may be released to those officers, agents, or employees of the employer who need to know the information for reasons connected with their employment.

Source: Laws 1988, LB 582, § 6.

48-1907 Sections, how construed.

Nothing in sections 48-1901 to 48-1906 shall be construed to establish any rule, right, or duty not expressly provided for in such sections.

Source: Laws 1988, LB 582, § 7.

48-1908 Body fluids; prohibited acts; penalty.

(1) It shall be unlawful to provide, acquire, or use body fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 582, § 8.

48-1909 Body fluids; tampering; penalty.

(1) No person shall tamper with or aid or assist another in tampering with body fluids at any time during or after the collection or analysis of such fluids for the purpose of altering the results of any test to determine the presence of drugs or alcohol.

(2) Any employee who violates subsection (1) of this section may be subjected to the same discipline as if the employee had refused the directive of the employer to provide a body fluid or breath sample.

(3) Any person, including an employee, who violates subsection (1) of this section shall be guilty of a Class I misdemeanor.

Source: Laws 1988, LB 582, § 9.

48-1910 Refusal to submit to test; effect.

Any employee who refuses the lawful directive of an employer to provide a body fluid or breath sample as provided in section 48-1903 may be subject to disciplinary or administrative action by the employer, including denial of continued employment.

Source: Laws 1988, LB 582, § 10.

ARTICLE 20

EMPLOYEE BENEFITS

Section

48-2001. Employee trusts or plans; duration; restraints inapplicable.

48-2002. Employee trusts or plans; kinds; trustee; requirements.

48-2001 Employee trusts or plans; duration; restraints inapplicable.

Any trust or plan heretofore or hereafter created for the purposes and of the type enumerated in section 48-2002, whether in real or personal property or in both real and personal property, may continue in perpetuity or for such time as may be necessary to accomplish the purposes of the trust or plan. Such trust or plan shall not be invalid as violating any statute or rule of law against perpetuities, against accumulations of earnings, concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts or agreements.

Source: Laws 1957, c. 77, § 1, p. 313; R.S.1943, (1989), § 24-619; Laws 1990, LB 823, § 1.

48-2002 Employee trusts or plans; kinds; trustee; requirements.

(1) Trusts or plans which are entitled to the exemption from limitation as to their duration provided for in section 48-2001 shall be:

(a) Created by an employer or employers primarily for the benefit of some or all of the employees of such employer or employers, or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit, or other similar type of employee benefit plan;

(b) Contributed to by the employer or employees or both; and

(c) Existing for the purpose of distributing the earnings or principal, or earnings and principal, of the trust to or for the benefit of some or all of such employees, either before or after their employment ceases, or their families or appointees.

(2) In addition, in the case of such trusts hereafter created by public corporations, municipal corporations, or political subdivisions of this state, the trustee shall be qualified to act as a trustee and licensed to do business in

Nebraska, the management of the affairs of the trust shall be carried on in this state, and the trust agreement shall contain provisions for termination of the trust and for substitution of trustees, by unilateral action of the public corporation, municipal corporation, or political subdivision which created the trust. If a qualified trust corporation licensed to do business in Nebraska with capital of not less than five hundred thousand dollars applies to the employer for appointment as successor trustee on a basis of cost for administering the trust, not in excess of the basis of cost then existing, no public corporation, municipal corporation, or political subdivision of this state shall incur any additional obligation, under existing agreements as to such trusts, which does not comply with this subsection. Any trust created which violates this subsection shall be void.

Source: Laws 1957, c. 77, § 2, p. 313; Laws 1976, LB 655, § 1; R.S.1943, (1989), § 24-620; Laws 1990, LB 823, § 2.

ARTICLE 21

CONTRACTOR REGISTRATION

Section

- 48-2101. Act, how cited.
- 48-2102. Legislative intent.
- 48-2103. Terms, defined.
- 48-2104. Registration required.
- 48-2105. Registration; application; contents; renewal.
- 48-2106. Application; report of change; amendments.
- 48-2107. Fees; exemption.
- 48-2108. Registration number.
- 48-2109. Cancellation of workers' compensation insurance policy; notice required.
- 48-2110. Failure to maintain workers' compensation insurance; notice of revocation.
- 48-2111. Notice of revocation; service; hearing.
- 48-2112. Investigatory powers.
- 48-2113. Complaints.
- 48-2114. Violation; citation; penalty; legal representation.
- 48-2115. Repealed. Laws 2016, LB270, § 7.
- 48-2116. Applicability of act.
- 48-2117. Database of contractors; contents; removal.

48-2101 Act, how cited.

Sections 48-2101 to 48-2117 shall be known and may be cited as the Contractor Registration Act.

Source: Laws 1994, LB 248, § 1; Laws 2009, LB162, § 1.

48-2102 Legislative intent.

It is the intent of the Legislature that all contractors doing business in Nebraska be registered with the department. It is not the intent of the Legislature to endorse the quality or performance of services provided by any individual contractor.

Source: Laws 1994, LB 248, § 2; Laws 2008, LB204, § 1.

48-2103 Terms, defined.

For purposes of the Contractor Registration Act:

- (1) Commissioner means the Commissioner of Labor;

(2) Construction means work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically;

(3) Contractor means an individual, firm, partnership, limited liability company, corporation, or other association 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 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;

(4) Department means the Department of Labor;

(5) Nonresident contractor means a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state; and

(6) Working days means Mondays through Fridays but does not include Saturdays, Sundays, or federal or state holidays. In computing fifteen working days, the day of receipt of any notice is not included and the last day of the fifteen working days is included.

Source: Laws 1994, LB 248, § 3; Laws 2008, LB204, § 2; Laws 2009, LB162, § 2.

48-2104 Registration required.

(1) Before performing any construction work in Nebraska, a contractor shall be registered with the department. If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business. Any person who performs work or has work performed on his or her own property or any person who earns less than five thousand dollars annually for construction services is not a contractor for purposes of the Contractor Registration Act.

(2) An exemption from the requirements under subsection (1) of this section does not exempt a contractor from withholding requirements under the Nebraska Revenue Act of 1967.

Source: Laws 1994, LB 248, § 4; Laws 2008, LB204, § 3; Laws 2009, LB162, § 3.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

48-2105 Registration; application; contents; renewal.

Each contractor shall apply to the department for a registration number on an application form provided by the department. The application shall contain the following information:

- (1) The name and federal employer identification number or, if the applicant is an individual, the social security number of the contractor;
- (2) The principal place of business of the contractor in Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Nebraska;
- (3) The telephone number of the contractor in the State of Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Nebraska;
- (4) The type of business entity of the contractor such as corporation, partnership, limited liability company, sole proprietorship, or trust;
- (5) The contractor option election to collect and remit sales and use tax on purchases of building materials and fixtures annexed to real property;
- (6) The following information about the business entity:
 - (a) If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation; and
 - (b) If the contractor is other than a corporation, the name, address, and telephone number of each owner;
- (7) Proof of (a) a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of workers' compensation insurance coverage indicating that it is in force, (b) a certificate evidencing approval of self-insurance privileges as provided by the Nebraska Workers' Compensation Court pursuant to section 48-145, or (c) a signed statement indicating that the contractor is not required to carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act; and
- (8) A description of the business which includes the employer's standard industrial classification code or the principal products and services provided.

Each application shall be renewed annually upon payment of the fee prescribed in section 48-2107.

Source: Laws 1994, LB 248, § 5; Laws 1997, LB 752, § 129; Laws 2009, LB162, § 4.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2106 Application; report of change; amendments.

- (1) A contractor shall report to the commissioner any change in the information originally reported on or with the application under section 48-2105 within fifteen days of the change, except that the contractor shall notify the commissioner of changes in workers' compensation insurance coverage at least ten days prior to any change in coverage.
- (2) After the time specified in subsection (1) of this section, the commissioner, with good cause shown, may determine that amendments may be made to correct an application.

(3) Amendments to applications shall not be permitted when a change occurs in the business classification such as a change from a sole proprietorship to a corporation.

Source: Laws 1994, LB 248, § 6.

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.

48-2108 Registration number.

Within thirty days of receipt of a completed application, the commissioner shall issue to the contractor a registration number. The registration number shall be a five-digit number followed by a two-digit number indicating the year of issuance.

Source: Laws 1994, LB 248, § 8.

48-2109 Cancellation of workers' compensation insurance policy; notice required.

Any insurance company carrying a contractor's workers' compensation insurance policy shall notify the department in case of cancellation by either the insurance company or the contractor of such policy. The notice shall contain (1) the name of the insurance carrier, (2) the name of the insured contractor, and (3) the date the cancellation is effective. Contractors who are approved by

the Nebraska Workers' Compensation Court for self-insurance shall notify the department at least ten days prior to the termination of such self-insurance.

Source: Laws 1994, LB 248, § 9.

48-2110 Failure to maintain workers' compensation insurance; notice of revocation.

The commissioner shall issue a notice of revocation of registration to a contractor when an investigation reveals that the contractor no longer meets the conditions of registration set out in section 48-2105 by failure to maintain compliance with the laws of this state relating to workers' compensation insurance coverage. If the commissioner receives a notice of cancellation of workers' compensation insurance coverage, the commissioner shall revoke the registration as of the time of cancellation unless the contractor provides a new certification of insurance prior to the cancellation date.

Source: Laws 1994, LB 248, § 14.

48-2111 Notice of revocation; service; hearing.

The commissioner shall serve notice of revocation on the contractor by mailing such notice by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery to the address of the contractor or the contractor's registered agent listed in the application. Upon a showing of compliance with the application requirements set out in section 48-2105, the commissioner may temporarily reinstate the registration pending a hearing on the revocation. A registration revoked under this section shall not be permanently reinstated. To receive a new registration number, the contractor shall reapply to the commissioner.

Source: Laws 1994, LB 248, § 15; Laws 2001, LB 180, § 7.

48-2112 Investigatory powers.

(1) The commissioner may make investigations he or she finds necessary or appropriate to determine if there is compliance with the Contractor Registration Act. Investigations shall take place at the times and places as the commissioner directs. For purposes of any investigation under this section, the commissioner may interview persons at the worksite, take photographs, and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the worksite. Investigations may be conducted, without prior notice, by correspondence, telephone conversations, or review of materials submitted to the department.

(2) For purposes of any investigation or proceeding under this section, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to such person an order requiring him or her to appear before the commissioner or the officer designated by the commissioner and produce

documentary evidence if so ordered or give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt.

Source: Laws 1994, LB 248, § 10.

48-2113 Complaints.

Written complaints regarding the registration of a contractor made to the commissioner in which the complainant provides his or her name and address shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint when the complainant's identity would be protected under other statutes or rules and regulations.

Source: Laws 1994, LB 248, § 11.

48-2114 Violation; citation; penalty; legal representation.

(1) The commissioner shall issue a citation to a contractor when an investigation reveals that the contractor has violated:

- (a) The requirement that the contractor be registered; or
- (b) The requirement that the contractor's registration information be substantially complete and accurate.

(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. 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 contractor shall have fifteen working days from 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 pursuant to the Administrative Procedure Act.

(4) If the contractor has never been registered under the Contractor Registration Act, the contractor shall have sixty working days from the date of the citation to register. No administrative penalty shall be assessed if the contractor registers within such sixty-day period. This subsection shall remain in effect until March 1, 2009.

(5) In any civil action to enforce the Contractor Registration Act, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

Source: Laws 1994, LB 248, § 12; Laws 2001, LB 180, § 8; Laws 2008, LB204, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

48-2115 Repealed. Laws 2016, LB270, § 7.

48-2116 Applicability of act.

The Contractor Registration Act shall not apply to the state or any political subdivision thereof.

Source: Laws 1994, LB 248, § 16.

48-2117 Database of contractors; contents; removal.

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a database of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967.

(2) The database shall be accessible on the website of the Department of Labor.

(3) The database 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 database, 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 database.

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

48-2201. Transferred to section 48-2208.

48-2202. Transferred to section 48-2209.

48-2203. Transferred to section 48-2210.

48-2204. Transferred to section 48-2214.

48-2205. Transferred to section 48-2211.

48-2206. Transferred to section 48-2212.

48-2207. Act, how cited.

48-2208. Terms, defined.

48-2209. Recruitment of non-English-speaking persons; employer; duties.

48-2210. Written statement required; when; contents; employer provide transportation; when.

Section

- 48-2211. Violations; penalty.
 48-2212. Civil action; injunctive relief; authorized.
 48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.
 48-2214. Rules and regulations; commissioner; powers.

48-2201 Transferred to section 48-2208.

48-2202 Transferred to section 48-2209.

48-2203 Transferred to section 48-2210.

48-2204 Transferred to section 48-2214.

48-2205 Transferred to section 48-2211.

48-2206 Transferred to section 48-2212.

48-2207 Act, how cited.

Sections 48-2207 to 48-2214 shall be known and may be cited as the Non-English-Speaking Workers Protection Act.

Source: Laws 2003, LB 418, § 1.

48-2208 Terms, defined.

For purposes of the Non-English-Speaking Workers Protection Act, unless the context otherwise requires:

- (1) Actively recruit means any affirmative act, as defined by the department, done by or on behalf of an employer for the purpose of recruitment or hiring of non-English-speaking employees who reside more than five hundred miles from the place of employment;
- (2) Commissioner means the Commissioner of Labor;
- (3) Coordinator means the meatpacking industry worker rights coordinator appointed pursuant to section 48-2213;
- (4) Department means the Department of Labor;
- (5) Employ means to permit to work;
- (6) Employee means any individual employed by any employer but does not include:
 - (a) Any individual employed in agriculture; or
 - (b) Any individual employed as a child care provider in or for a private home;
- (7) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons employing one hundred or more employees at any one time, except for seasonal employment of not more than twenty weeks in any calendar year, or person acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States, the state, or any political subdivision thereof;
- (8) Meatpacking operation means a business in which slaughtering, butchering, meat canning, meatpacking, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet food manufacturing, processing of meatpacking products, or rendering is carried on;

(9) Meatpacking products includes livestock products and poultry products as such terms are defined in section 54-1902; and

(10) Non-English-speaking employee means an employee who does not speak, read, or understand English to the degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment.

Source: Laws 1995, LB 20, § 1; R.S.1943, (1998), § 48-2201; Laws 2003, LB 418, § 2.

48-2209 Recruitment of non-English-speaking persons; employer; duties.

If an employer or a representative of an employer actively recruits any non-English-speaking persons for employment in this state and if more than ten percent of the employees of an employer are non-English-speaking employees and speak the same non-English language, the employer shall provide a bilingual employee who is conversant in the identified non-English language and available at the worksite for each shift during which a non-English-speaking employee is employed to (1) explain and respond to questions regarding the terms, conditions, and daily responsibilities of employment and (2) serve as a referral agent to community services for the non-English-speaking employees.

Source: Laws 1995, LB 20, § 2; R.S.1943, (1998), § 48-2202; Laws 2003, LB 418, § 3.

48-2210 Written statement required; when; contents; employer provide transportation; when.

(1) An employer or a representative of an employer who actively recruits any non-English-speaking persons for employment in this state and whose work force is more than ten percent non-English-speaking employees who speak the same non-English language shall file with the commissioner a written statement signed by the employer and each such employee which provides relevant information regarding the position of employment, including:

(a) The minimum number of hours the employee can expect to work on a weekly basis;

(b) The hourly wages of the position of employment including the starting hourly wage;

(c) A description of the responsibilities and tasks of the position of employment;

(d) A description of the transportation and housing to be provided, if any, including any costs to be charged for housing or transportation, the length of time such housing is to be provided, and whether or not such housing is in compliance with all applicable state and local housing standards; and

(e) Any occupational physical demands and hazards of the position of employment which are known to the employer.

The statement shall be written in English and in the identified language of the non-English-speaking employee, and the employer or the representative shall explain in detail the contents of the statement prior to obtaining the employee's signature. A copy of the statement shall be given to the employee.

It is a violation of this subsection if an employer or representative knowingly and willfully provides false or misleading information on the statement or regarding the contents of the statement.

(2) An employer shall provide transportation for a recruited employee, at no cost to the employee, to the location from which the employee was recruited if the employee:

(a) Resigns from employment within four weeks after the initial date of employment; and

(b) Requests transportation within not more than three days after the employee's last day of employment with the employer which recruited the employee.

Source: Laws 1995, LB 20, § 3; R.S.1943, (1998), § 48-2203; Laws 2003, LB 418, § 4.

48-2211 Violations; penalty.

Any employer who violates section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto is guilty of a Class IV misdemeanor.

Source: Laws 1995, LB 20, § 5; R.S.1943, (1998), § 48-2205; Laws 2003, LB 418, § 5.

48-2212 Civil action; injunctive relief; authorized.

Any person aggrieved as a result of a violation of section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto may file suit in any district court of this state. If the court finds that the respondent has intentionally violated section 48-2209 or 48-2210 or the rules and regulations adopted and promulgated pursuant thereto, the court may award damages up to and including an amount equal to the original damages and provide injunctive relief.

Source: Laws 1995, LB 20, § 6; R.S.1943, (1998), § 48-2206; Laws 2003, LB 418, § 6.

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.

48-2214 Rules and regulations; commissioner; powers.

The commissioner shall adopt and promulgate rules and regulations necessary to carry out the Non-English-Speaking Workers Protection Act. The commissioner or a representative of the commissioner, including the coordinator, may:

(1) Inspect employment records of an employer relating to the total number of employees, the total number of non-English-speaking employees, and the services provided to non-English-speaking employees; and

(2) Interview an employer, any representative, any agent, or an employee of the employer during working hours or at other reasonable times.

Source: Laws 1995, LB 20, § 4; R.S.1943, (1998), § 48-2204; Laws 2003, LB 418, § 8.

ARTICLE 23

NEW HIRE REPORTING ACT

Section

- 48-2301. Act, how cited.
- 48-2302. Terms, defined.
- 48-2303. Employers; report to Department of Health and Human Services; when.
- 48-2304. Employer; immunity.
- 48-2305. Multistate employer; transmission of reports.
- 48-2306. Employer; fine.
- 48-2307. Department; report.
- 48-2308. Rules and regulations.

48-2301 Act, how cited.

Sections 48-2301 to 48-2308 shall be known and may be cited as the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 40.

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.

48-2303 Employers; report to Department of Health and Human Services; when.

(1) Beginning October 1, 1997, employers who hire or rehire any employee, for any amount of income or compensation, shall report to the department within the time period specified in subsection (2) of this section the name, address, and social security number of that employee, the date of hire or rehire, and the name, address, and federal tax identification number of the employer. Employers shall transmit the required information to the department by forwarding a copy of the employee's federal W-4 with the date of hire or rehire inscribed upon it or any form approved in advance by the department. Employers may transmit the required information by first-class mail, fax, magnetic tape, disc, or electronic or any other means approved by the department.

(2) Employers shall report the hire or rehire of employees (a) within twenty days after the date of hire or rehire or (b) if reports are transmitted magnetically or electronically, by two monthly transmissions, if necessary, which are not less than twelve days or more than sixteen days apart.

Source: Laws 1997, LB 752, § 42; Laws 2004, LB 950, § 1.

48-2304 Employer; immunity.

An employer shall not be liable under any state law to any individual for disclosure of information or any other action taken in good faith compliance with the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 43.

48-2305 Multistate employer; transmission of reports.

An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with the New Hire Reporting Act by designating one of such states in which the employer has employees as the state to which the employer will transmit the report described in section 48-2303. Any Nebraska employer that transmits reports pursuant to this section shall notify the department in writing of the state which such employer designates for the purpose of transmitting reports.

Source: Laws 1997, LB 752, § 44; Laws 2007, LB296, § 219.

48-2306 Employer; fine.

On and after October 1, 1998, the department may levy a fine not to exceed twenty-five dollars for each employee not reported by the employer to the department. The department shall determine whether or not to levy a fine based upon the good faith efforts of an employer to comply with the New Hire Reporting Act. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1997, LB 752, § 45; Laws 2007, LB296, § 220.

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.

48-2308 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 47.

ARTICLE 24**IMMIGRANT WORKFORCE**

Section

48-2401. Repealed. Laws 2004, LB 940, § 4.

48-2402. Repealed. Laws 2004, LB 940, § 4.

48-2401 Repealed. Laws 2004, LB 940, § 4.

48-2402 Repealed. Laws 2004, LB 940, § 4.**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.
48-2505.	Repealed. Laws 2007, LB 265, § 38.
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.****48-2505 Repealed. Laws 2007, LB 265, § 38.****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

- 48-2601. Act, how cited.
- 48-2602. Terms, defined.
- 48-2603. Service of process; subpoenas.
- 48-2604. Athlete agent; registration required; void contracts.
- 48-2605. Registration as athlete agent; form; requirements.
- 48-2606. Certificate of registration; issuance or denial; renewal.
- 48-2607. Suspension, revocation, or refusal to renew registration.
- 48-2608. Temporary registration.

Section

- 48-2609. Registration and renewal fees.
- 48-2610. Required form of contract.
- 48-2611. Notice to educational institution.
- 48-2612. Student-athlete's right to cancel.
- 48-2613. Required records.
- 48-2614. Prohibited conduct.
- 48-2615. Criminal penalty.
- 48-2616. Civil remedies.
- 48-2617. Administrative penalty.
- 48-2618. Uniformity of application and construction.
- 48-2619. Electronic Signatures in Global and National Commerce Act.

48-2601 Act, how cited.

Sections 48-2601 to 48-2619 shall be known and may be cited as the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 1.

48-2602 Terms, defined.

In the Nebraska Uniform Athlete Agents Act:

(1) Agency contract means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;

(2) Athlete agent means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(3) Athletic director means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) Contact means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) Endorsement contract means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(6) Intercollegiate sport means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(8) Professional-sports-services contract means an agreement under which an individual is employed, or agrees to render services, as a player on a profes-

sional sports team, with a professional sports organization, or as a professional athlete;

(9) 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;

(10) Registration means registration as an athlete agent pursuant to the act;

(11) 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; and

(12) Student-athlete means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Source: Laws 2009, LB292, § 2.

48-2603 Service of process; subpoenas.

(1) By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(2) The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 3.

48-2604 Athlete agent; registration required; void contracts.

(1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 48-2606 or 48-2608.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

Source: Laws 2009, LB292, § 4.

48-2605 Registration as athlete agent; form; requirements.

(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

- (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (d) A description of the applicant's:
 - (i) Formal training as an athlete agent;
 - (ii) Practical experience as an athlete agent; and
 - (iii) Educational background relating to the applicant's activities as an athlete agent;
 - (e) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (f) The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:
 - (i) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;
 - (h) Whether the applicant or any person named pursuant to subdivision (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or an educational institution;
 - (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (g) of this subsection as an athlete agent in any state.
- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

- (a) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
- (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (c) Was signed by the applicant under penalty of perjury.

Source: Laws 2009, LB292, § 5.

48-2606 Certificate of registration; issuance or denial; renewal.

(1) Except as otherwise provided in subsection (2) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection (1) of section 48-2605 or whose application has been accepted under subsection (2) of section 48-2605.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

- (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
- (b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
- (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
- (d) Engaged in conduct prohibited by section 48-2614;
- (e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
- (f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or an educational institution; or
- (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2) of this section, the Secretary of State shall consider:

- (a) How recently the conduct occurred;
- (b) The nature of the conduct and the context in which it occurred; and
- (c) Any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may

file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

- (a) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for two years.

Source: Laws 2009, LB292, § 6.

48-2607 Suspension, revocation, or refusal to renew registration.

(1) The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection (2) of section 48-2606.

(2) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

48-2608 Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Source: Laws 2009, LB292, § 8.

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.

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

(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.

48-2611 Notice to educational institution.

(1) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

Source: Laws 2009, LB292, § 11.

48-2612 Student-athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels 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.

Source: Laws 2009, LB292, § 12.

48-2613 Required records.

(1) An athlete agent shall retain the following records for a period of five years:

- (a) The name and address of each individual represented by the athlete agent;
- (b) Any agency contract entered into by the athlete agent; and
- (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required by subsection (1) of this section to be retained are open to inspection by the Secretary of State during normal business hours.

Source: Laws 2009, LB292, § 13.

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.

48-2615 Criminal penalty.

An athlete agent who violates section 48-2614 is guilty of a Class I misdemeanor.

Source: Laws 2009, LB292, § 15.

48-2616 Civil remedies.

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of the Nebraska Uniform Athlete Agents Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or a former student-athlete, the educational institution was injured by a violation of the act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) The act does not restrict rights, remedies, or defenses of any person under law or equity.

Source: Laws 2009, LB292, § 16.

48-2617 Administrative penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 17.

48-2618 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2009, LB292, § 18.

48-2619 Electronic Signatures in Global and National Commerce Act.

The provisions of the Nebraska Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464 (2000), as such act existed on January 1, 2009, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2009, LB292, § 19.

ARTICLE 27

PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT

Section

- 48-2701. Act, how cited.
 48-2702. Terms, defined.
 48-2703. Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.
 48-2704. Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration application; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.
 48-2705. Financial commitment required; filing with department.
 48-2706. Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of notice; responsibilities of client; liability; sales tax liability; health benefit plan.
 48-2707. Funds; records.
 48-2708. Retirement and employee welfare benefit plans.
 48-2709. Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.
 48-2710. Fees.
 48-2711. Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.

48-2701 Act, how cited.

Sections 48-2701 to 48-2711 shall be known and may be cited as the Professional Employer Organization Registration Act.

Source: Laws 2010, LB579, § 1.

48-2702 Terms, defined.

For purposes of the Professional Employer Organization Registration Act:

- (1) Client means any person who enters into a professional employer agreement with a professional employer organization;
- (2) Co-employer means either a professional employer organization or a client;
- (3) Co-employment relationship means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between the client employer and a professional employer organization as co-employers pursuant to a professional employer agreement and the act. In such a co-employment relationship:
- (a) The professional employer organization is entitled to enforce only such employer rights and is subject to only those employer obligations specifically allocated to the professional employer organization by the professional employer agreement or the act;
- (b) The client is entitled to enforce those rights and is obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement or the act; and

(c) The client is entitled to enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or the act;

(4) Covered employee means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria: (a) The individual has received written notice of co-employment with the professional employer organization; and (b) the individual's co-employment relationship is pursuant to a professional employer agreement subject to the act. Individuals who are officers, directors, shareholders, partners, and managers of the client or who are members of a limited liability company if such company is the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees, if such individuals meet the criteria of this subdivision and act as operational managers or perform day-to-day operational services for the client;

(5) Department means the Department of Labor;

(6) Direct-hire employee means an individual who is an employee of the professional employer organization within the meaning of the Nebraska Workers' Compensation Act and who is not an employee of a client and who is not a covered employee;

(7) Master policy means a workers' compensation insurance policy issued to a professional employer organization that provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct-hire employees or that provides coverage for one client in addition to the professional employer organization's direct-hire employees. Two or more clients insured under the same policy solely because they are under common ownership are considered a single client for purposes of this subdivision;

(8) Multiple coordinated policy means a workers' compensation insurance policy that provides coverage for only a single client or group of clients under common ownership but with payment obligations and certain policy communications coordinated through the professional employer organization;

(9) Person means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

(10) Professional employer agreement means a written contract by and between a client and a professional employer organization that provides:

(a) For the co-employment of covered employees;

(b) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

(c) That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

(11)(a) Professional employer organization means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization or PEO.

(b) The following are not professional employer organizations or professional employment services for purposes of the act:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of sections 414(b) and (c) of the Internal Revenue Code;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; and

(iii) Providing temporary help services;

(12) Professional employer organization group means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

(13) Professional employer services means the service of entering into co-employment relationships;

(14) Registrant means a professional employer organization registered under the act;

(15) Temporary help services means services consisting of a person:

(a) Recruiting and hiring its own employees;

(b) Finding other organizations that need the services of those employees;

(c) Assigning those employees (i) to perform work at or services for the other organizations to support or supplement the other organizations' workforces, (ii) to provide assistance in special work situations, including employee absences, skill shortages, or seasonal workloads, or (iii) to perform special assignments or projects; and

(d) Customarily attempting to reassign the employees to other organizations when they finish each assignment; and

(16) Working capital means current assets less current liabilities as defined by generally accepted accounting principles.

Source: Laws 2010, LB579, § 2.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2703 Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.

(1) Nothing contained in the Professional Employer Organization Registration Act or in any professional employer agreement shall affect, modify, or amend any collective-bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et seq.

(2)(a) Nothing contained in the Professional Employer Organization Registration Act or any professional employer agreement shall:

(i) Diminish, abolish, or remove rights of covered employees as to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;

(ii) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the professional employer organization has specifically agreed otherwise in writing;

(iii) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or the act; or

(iv) Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices. A co-employer shall, immediately after receipt of such notice, notify the other co-employer of such receipt and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

(b)(i) Nothing contained in the act or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(ii) A covered employee who is required to be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

(c) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such licensing, registration, or certification requirements.

(d) A client shall have the sole right to direct and control the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of such covered employees or clients.

(3) With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into a professional employer agreement with a professional employer organization or uses the services of a professional employer organization.

Source: Laws 2010, LB579, § 3.

48-2704 Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration applica-

tion; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.

(1) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Professional Employer Organization Registration Act.

(2) A person who is not registered under the Professional Employer Organization Registration Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

(3) Each applicant for registration under the act shall provide the department with the following information:

(a) The name or names under which the professional employer organization conducts business;

(b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

(c) The professional employer organization's taxpayer or employer identification number;

(d) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

(e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interest of the professional employer organization;

(f) A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(g) A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group. At the time of initial registration, the applicant shall submit the most recent audit of the applicant, which audit may not be older than thirteen months. Thereafter, a professional employer organization or professional employer organization group shall file on an annual basis, within one hundred eighty days after the end of the professional employer organization's fiscal year, a succeeding audit. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section. A professional employer organization that has not

had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 48-2705 and present financial statements reviewed by a certified public accountant.

(4)(a) Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.

(b) Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application under subsection (7) of this section or a full registration if there are more than fifty covered employees. The department may issue an interim operating permit for the period the registration application is pending if the professional employer organization is currently registered or licensed by another state and the department determines it to be in the best interests of the potential covered employees.

(5) Within one hundred eighty days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

(6) Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Professional Employer Organization Registration Act on a combined or consolidated basis if each member of the professional employer organization group guarantees the financial capacity obligations under the act of each other member of the professional employer organization group. If a professional employer organization group submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(7)(a) A professional employer organization is eligible for a limited registration under the act if such professional employer organization:

(i) Submits a properly executed request for limited registration on a form provided by the department;

(ii) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(iii) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(iv) Does not have more than fifty covered employees employed or domiciled in this state on any given day.

(b) A limited registration is valid for one year and may be renewed.

(c) A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

(d) Section 48-2705 does not apply to applicants for limited registration.

(8) The department shall maintain a list of professional employer organizations registered under the act that is readily available to the public by electronic or other means.

(9) The department may prescribe forms necessary to promote the efficient administration of this section.

(10) The department shall, to the extent practical, permit by rule and regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department. Such rule and regulation may provide for the acceptance of electronic filings and other assurance by an independent and qualified entity approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of this section and section 48-2705. Such rule and regulation shall permit a professional employer organization to authorize the entity approved by the department to act on the professional employer organization's behalf in complying with the registration requirements of the act, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of the act.

(11) All records, reports, and other information obtained from a professional employer organization under the act, except to the extent necessary for the proper administration of the act by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

Source: Laws 2010, LB579, § 4.

48-2705 Financial commitment required; filing with department.

(1) Except as provided in subsections (7) and (10) of section 48-2704, each professional employer organization or professional employer organization group shall have either:

(a) Positive working capital of at least one hundred thousand dollars at the time of initial registration and each renewal thereafter as reflected in the financial statements submitted to the department with the initial registration and each annual renewal; or

(b)(i) If the positive working capital of the professional employer organization is less than one hundred thousand dollars, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars; or

(ii) If the financial statement submitted to the department indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than one hundred thousand dollars plus an amount that is sufficient to cover that deficit.

(2) The commitment described in subdivision (1)(b) of this section shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, workers' compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer organization group, against any relevant third party, or both.

Source: Laws 2010, LB579, § 5.

48-2706 Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of notice; responsibilities of client; liability; sales tax liability; health benefit plan.

(1) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(2) Except as specifically provided in the Professional Employer Organization Registration Act or in the professional employer agreement, in each co-employment relationship:

(a) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(b) The professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the act or in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the act during the term of co-employment by the professional employer organization of such covered employee; and

(c) Unless otherwise expressly agreed by the professional employer organization and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

(3) Except as specifically provided in the Professional Employer Organization Registration Act, the co-employment relationship between the client and the

professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(a) The allocation of rights, duties, and obligations as described in this section;

(b) A provision that the professional employer organization shall have responsibility to pay wages to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this section, wages does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement;

(c) A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the act and the professional employer agreement. The client shall have a right to hire, discipline, and terminate a covered employee; and

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

(4) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide, and the client shall post in a conspicuous place at the client's worksite, the following:

(a) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

(b) Any notice required by the state relating to unemployment compensation and the minimum wage.

(5) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(a) A client shall be solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business;

(b) A client shall be solely responsible for (i) directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client and (ii) the acts, errors, or omissions

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of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

(c) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(d) Nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement; and

(e) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

(6) When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization charges the client a different amount than it is charged by the authorized insurer.

(7) For purposes of this state or any county, municipality, or other political subdivision thereof:

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Professional Employer Organization Registration Act shall relieve a client of any sales tax liability with respect to its goods or services;

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

(c) Any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Any benefit or monetary consideration that meets the requirements of mandates imposed on a client and that is received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(d) In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply

any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

(8) A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

Source: Laws 2010, LB579, § 6.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2707 Funds; records.

Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

Source: Laws 2010, LB579, § 7.

48-2708 Retirement and employee welfare benefit plans.

(1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

Source: Laws 2010, LB579, § 8.

Cross References

Multiple Employer Welfare Arrangement Act, see section 44-7601.

Small Employer Health Insurance Availability Act, see section 44-5223.

48-2709 Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.

(1) The responsibility to obtain workers' compensation coverage for employees covered by the professional employer agreement and for other employees of the client shall be allocated in the professional employer agreement to the client, the professional employer organization, or both, in accordance with this section. If any such responsibility is allocated to the professional employer organization, the professional employer organization shall:

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(a) Advise the client of the provisions of subdivisions (9) and (10) of section 48-115;

(b) Advise the client of its obligation to obtain an additional workers' compensation insurance policy if the professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement; and

(c) Provide the client with the name of the insurer providing coverage, the policy number, claim notification instructions, and any itemized charges that are to be made for workers' compensation coverage within ten days after enrollment.

(2)(a) If all employees of the client are not covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client may be written to limit coverage to those employees who are co-employees of the professional employer organization and the client. If a professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement, then the client shall obtain an additional workers' compensation insurance policy. The policy obtained by the client shall be written to cover any and all employees not covered by the professional employer organization's policy, including any potential new or unknown employees. All insurance policies issued pursuant to this subsection shall be subject to and shall comply with the requirements of this subsection and any rule or regulation adopted by the Department of Insurance.

(b) If all employees of the client are covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client must be written to cover any and all employees of the client, including potential new or unknown employees that may not be covered employees under the agreement.

(c) A professional employer organization shall not split coverage that it obtains for a client between two or more policies.

(d) A professional employer organization shall not split coverage for its direct-hire employees between two or more policies.

(e) The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(3) If the professional employer agreement allocates responsibility to the professional employer organization to obtain workers' compensation coverage only for co-employees, then the professional employer organization shall provide the following information to the administrator of the Nebraska Workers' Compensation Court. Such information shall be provided for any such professional employer agreement in effect on January 1, 2012, and prior to the effective date of any new professional employer agreement or any amendment of an agreement adding such a provision after January 1, 2012, and shall be provided in a form and manner prescribed by the administrator:

(a) The names and addresses of the client and the professional employer organization;

(b) The effective date of the professional employer agreement;

(c) A description of the employees covered under the professional employer agreement;

(d) Evidence that any and all other employees of the client are covered by a valid workers' compensation insurance policy; and

(e) Any other information the administrator may require regarding workers' compensation coverage of the professional employer organization, the client, or the covered employees.

(4) If workers' compensation coverage for a client's employees covered by the professional employer agreement and for other employees of the client is not entirely available in the voluntary market, then assigned risk workers' compensation coverage written subject to section 44-3,158 may only be written on a single policy that covers all employees and co-employees of the client. Assigned risk workers' compensation insurance for the professional employer organization may also be written, but only on a basis that covers its direct-hire employees and excludes employees and co-employees of its clients. The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(5) If a master policy or multiple coordinated policy providing coverage to a client is obtained by a professional employer organization, then the professional employer organization shall provide the client with a notice that the client shall conspicuously post at its workplace. Such notice shall provide the name and address of the workers' compensation insurer and the individual to whom claims shall be directed. If more than one workers' compensation insurer provides coverage for employees and co-employees of the client, the client shall post such information for all such workers' compensation insurers.

(6) Both the client and the professional employer organization shall be considered the employer for purposes of coverage under the Nebraska Workers' Compensation Act. The protection of the exclusive remedy provision of the act shall apply to the professional employer organization, to the client, and to all covered employees and other employees of the client regardless of which co-employer obtains such workers' compensation coverage.

(7) If a client receives notice of the cancellation, nonrenewal, or termination of workers' compensation coverage obtained by the professional employer organization, then the client may withdraw from the professional employer agreement without penalty unless the client is notified by the professional employer organization of replacement coverage within fifteen days after the notice.

(8) A professional employer organization shall not impose any fee increase on a client based on the actual or anticipated cost of workers' compensation coverage without giving the client at least thirty days' advance notice and an opportunity to withdraw from the professional employer agreement without penalty.

(9) The professional employer organization shall not make any materially inaccurate, misleading, or fraudulent representations to the client regarding the cost of workers' compensation coverage. If the professional employer organization charges the client an itemized amount for workers' compensation coverage, the professional employer organization shall provide the client with an accurate and concise description of the basis upon which it was calculated and the services that are included. A professional employer organization shall not charge a client an itemized amount for workers' compensation coverage that is materially inconsistent with the actual amounts that the professional employer organization is charged by the insurer, given reasonably anticipated loss-

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sensitive charges, if applicable, reasonable recognition of the professional employer organization's costs, and a margin for profit.

Source: Laws 2010, LB579, § 9.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

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.

48-2711 Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.

(1)(a) A person shall not knowingly:

(i) Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Professional Employer Organization Registration Act;

(ii) Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act; or

(iii) Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(b) Any person violating this subsection is guilty of a Class I misdemeanor.

(2) Disciplinary action may be taken by the department:

(a) Against a person for violation of subsection (1) of this section;

(b) Against a professional employer organization or a controlling person of a professional employer organization upon the conviction of a professional employer organization or a controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

(c) Against a professional employer organization or a controlling person of a professional employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

(d) Against a professional employer organization or a controlling person of a professional employer organization for a willful violation of the act or any order or regulation issued by the department under the act.

(3)(a) Upon finding, after notice and opportunity for hearing, that a professional employer organization, a controlling person of a professional employer organization, or a person offering professional employer services has violated one or more provisions of this section, and subject to any appeal required, the department may:

- (i) Deny an application for registration;
- (ii) Revoke, restrict, or refuse to renew a registration;
- (iii) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation;
- (iv) Place the registrant on probation for the period and subject to conditions that the department specifies; or
- (v) Issue a cease and desist order.

(b) A decision by the department under this subsection may be appealed in accordance with the Administrative Procedure Act.

(4) The department may adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of this section and sections 48-2704, 48-2705, and 48-2710.

Source: Laws 2010, LB579, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

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

- 48-2901. Act, how cited.
- 48-2902. Terms, defined.
- 48-2903. Presumption; act; how construed.

- Section
 48-2904. Violation.
 48-2905. Reports of suspected violations; department; duties; confidentiality.
 48-2906. Investigations.
 48-2907. Commissioner; citation; notice of penalty; contractor contest; hearing; unpaid administrative penalty, effect on government contracts.
 48-2908. Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.
 48-2909. Report; contents.
 48-2910. Contractor; post notice.
 48-2911. Contracts; affidavit required; rescission.
 48-2912. Contractor; false affidavit; penalties.

48-2901 Act, how cited.

Sections 48-2901 to 48-2912 shall be known and may be cited as the Employee Classification Act.

Source: Laws 2010, LB563, § 1.

48-2902 Terms, defined.

For purposes of the Employee Classification Act:

- (1) Commissioner means the Commissioner of Labor;
- (2) Construction has the same meaning as in section 48-2103;
- (3) Contractor means an individual, partnership, limited liability company, corporation, or other business entity engaged in a delivery service or a construction contractor business, as contractor is defined in section 48-2103, and includes any subcontractor performing services for a contractor;
- (4) Delivery service means the transport and delivery of goods, products, supplies, or raw materials upon the highways of this state;
- (5) Department means the Department of Labor; and
- (6) Performing services means the performance of construction labor or delivery services for remuneration.

Source: Laws 2010, LB563, § 2.

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.

48-2904 Violation.

It is a violation of the Employee Classification Act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under section 48-2903.

Source: Laws 2010, LB563, § 4.

48-2905 Reports of suspected violations; department; duties; confidentiality.

The department shall establish and operate a hotline and website for individuals to report suspected violations of the Employee Classification Act. The hotline and website may be operated in conjunction with the requirements of the Contractor Registration Act. At a minimum, the department shall require the reporting individual to provide contact information and a description of the suspected violation including the name of the business and job site location. Except to the extent needed in any administrative hearing, civil action, or criminal proceeding brought to enforce the Employment Security Law, Nebraska Revenue Act of 1967, or Nebraska Workers' Compensation Act, information obtained by the department under this section or obtained from any individual pursuant to the administration of the Employee Classification Act shall be held confidential.

Source: Laws 2010, LB563, § 5.

Cross References

Contractor Registration Act, see section 48-2101.
Employment Security Law, see section 48-601.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Workers' Compensation Act, see section 48-1,110.

48-2906 Investigations.

The department shall timely investigate all credible reports made pursuant to section 48-2905.

Source: Laws 2010, LB563, § 6.

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.

Cross References

Administrative Procedure Act, see section 84-920.

48-2908 Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.

Upon finding a contractor has violated the Employee Classification Act, the commissioner shall instigate proceedings pursuant to the Employment Security Law to collect any unpaid combined taxes plus interest. The commissioner shall share any violations with the Department of Revenue for analysis of violations of the Nebraska Revenue Act of 1967 and with the Nebraska Workers' Compensation Court. Upon receipt, the Department of Revenue shall promptly investigate and, if appropriate, proceed with the collection of any income tax not withheld plus interest and penalties. The commissioner, Department of Revenue, and Nebraska Workers' Compensation Court shall refer any violation reasonably believed to be a civil or criminal violation of the Employment Security Law, the Nebraska Revenue Act of 1967, the Nebraska Workers' Compensation Act, or another law to the appropriate prosecuting authority for appropriate action.

Source: Laws 2010, LB563, § 8.

Cross References

Employment Security Law, see section 48-601.

Nebraska Revenue Act of 1967, see section 77-2701.

Nebraska Workers' Compensation Act, see section 48-1,110.

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 website, 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.

48-2910 Contractor; post notice.

Every contractor shall post in a conspicuous place at the job site or place of business in English and Spanish the following notice:

(1) Every individual working for a contractor has the right to be properly classified by the contractor as an employee rather than an independent contractor if the individual does not meet the requirements of an independent contractor under the law known as the Employee Classification Act.

(2) If you believe you or someone else has not been properly classified as an employee or an independent contractor under the Employee Classification Act, contact the Department of Labor.

Source: Laws 2010, LB563, § 10.

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.

48-2912 Contractor; false affidavit; penalties.

Any contractor who knowingly provides a false affidavit under section 48-2911 to the state or political subdivision shall be subject to the penalties of perjury and upon a second or subsequent violation shall be barred from contracting with the state or any political subdivision for a period of three years after the date of discovery of the falsehood.

Source: Laws 2010, LB563, § 12.

Cross References

Perjury, penalty, see section 28-915.

ARTICLE 30

TELEWORKER JOB CREATION ACT

Section

- 48-3001. Act, how cited.
- 48-3002. Legislative findings and declarations.
- 48-3003. Terms, defined.
- 48-3004. Job training reimbursements; application; contents; confidentiality; director; duties; written agreement; contents.
- 48-3005. Employer; submit description of training program.
- 48-3006. Job training reimbursements; employer; requirements; amount of reimbursements.
- 48-3007. Request; form; contents.
- 48-3008. Department of Economic Development; audit employer.
- 48-3009. Right to reimbursement and agreement under act; not transferable; exception.
- 48-3010. Job training reimbursements; interest not allowed.
- 48-3011. No preclusion from receiving tax incentives or other benefits.

48-3001 Act, how cited.

Sections 48-3001 to 48-3011 shall be known and may be cited as the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 1.

48-3002 Legislative findings and declarations.

The Legislature hereby finds and declares that:

- (1) Current economic conditions in the state have resulted in unemployment, loss of jobs, and difficulty in attracting new jobs; and
- (2) It is the policy of the state to make revisions in Nebraska's job training structure to encourage businesses to promote the creation of and training for new jobs which can be performed in the home within the state.

Source: Laws 2010, LB1081, § 2.

48-3003 Terms, defined.

For purposes of the Teleworker Job Creation Act:

- (1) Application filing date means the date that the employer files an application for an agreement with the director under the act;
- (2) Base year means the three hundred sixty-five days immediately preceding the application filing date;
- (3) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the employer or its predecessors during the base year and who is employed at the project;
- (4) Director means the Director of Economic Development;
- (5) Employer means a corporation, partnership, limited liability company, cooperative, limited cooperative association, or joint venture, together with such other entities that are, or would be if incorporated, members of the same unitary group as defined in section 77-2734.04, that employs the teleworkers for which the job training reimbursements are applied for under the act;

(6) Qualified training program means a training program which has the following features: (a) The program has at least fifteen hours of instruction per trainee, all of which will occur in the trainee's residence; (b) trainees are each paid at least the federal minimum hourly wage per hour of training performed; (c) trainees are being trained as teleworkers; and (d) the program requires the trainees to pass job-related tests established by the employer;

(7) Qualifying employee means a teleworker who has the following characteristics: (a) The teleworker constitutes an employee of the employer under section 77-2753; (b) the teleworker resides in Nebraska at the time of his or her employment application according to his or her statement on his or her employment application; (c) the teleworker completes a qualified training program; (d) the teleworker is not a base-year employee; (e) the teleworker is not required to purchase a computer from the employer; (f) the teleworker has passed such job-related tests required under the qualified training program; (g) the teleworker has passed a criminal background check as required by the employer; and (h) the teleworker has been allowed to complete the hiring process paperwork from his or her residence, except for any drug testing and notarized proof of identity, which can be performed at such location directed by the employer; and

(8) Teleworker means a person who works for the employer from his or her residence through the use of telecommunication systems, such as the telephone and the Internet, for inbound-only service and order-taking sales calls, which calls may also include the upselling of related products or services.

Source: Laws 2010, LB1081, § 3.

48-3004 Job training reimbursements; application; contents; confidentiality; director; duties; written agreement; contents.

(1) To earn the job training reimbursements set forth in the Teleworker Job Creation Act, an employer shall file an application for an agreement with the director. An application may be filed at any time on or after April 8, 2010.

(2) The application shall contain:

(a) A written statement describing the expected employment of qualifying employees in this state;

(b) Sufficient documents, plans, and specifications as required by the director to support the plan and to define a project; and

(c) A copy of the letter submitted to the director seeking approval of the employer's qualified training program.

(3) The application and all supporting information shall be confidential except, for each project:

(a) The name of the employer;

(b) The amount of the job training reimbursement;

(c) The number of persons trained, with such number divided into three categories: The number who reside in rural areas; the number who reside in poverty areas; and the number who reside in all other parts of Nebraska, based on the rural areas and poverty areas described in section 48-3006; and

(d) The amount of total wages and other payments subject to withholding, as defined in section 77-2753, paid by the employer to all teleworkers who reside in Nebraska, with such residence as determined by the statement of the

qualifying employee on his or her employment application, within three hundred sixty-five days prior to the date of application, for the year of the project, and for the following twelve months.

The employer shall be required to provide this information to the director upon written request by the director.

(4)(a) The director shall approve the application and authorize the total amount of job training reimbursements expected to be earned as a result of the project if he or she is satisfied that (i) the plan in the application defines a project that meets the eligibility requirements established within the Teleworker Job Creation Act and (ii) such requirements will be reached within three hundred sixty-five calendar days after the application filing date. The director shall use the subaccount created under subsection (3) of section 81-1201.21 to provide reimbursements allowed by the act for the training of teleworkers.

(b) The director shall not approve further applications once the director has approved seven project applications filed before the end of fiscal year 2010-11 and the expected job training reimbursements from the approved projects total one million fifty thousand dollars in fiscal year 2010-11. Applications for an agreement shall for purposes of this limit be approved in the order in which they are received by the director.

(c) An employer and the director may enter into agreements for more than one project, up to a total of five approved project applications filed before the end of fiscal year 2010-11. The projects may be either sequential or concurrent. No new qualifying employees shall be included in more than one project for meeting the project requirements or the creation of job training reimbursements. When projects overlap and the plans do not clearly specify, the employer shall specify to which project the employment belongs. The employer has until it submits its request for reimbursement to the director to designate to which project a qualifying employee belongs. The employer may not receive job training reimbursements for a qualifying employee until the employer designates to which project that qualifying employee belongs. Such designation shall be made on such form to be filed with the director as the director shall direct.

(5) After approval, the employer and the director shall enter into a written agreement. The employer shall agree to complete the project, and the director, on behalf of the State of Nebraska, shall designate the approved plans of the employer as a project and, in consideration of the employer's agreement, agree to allow the employer to receive the job training reimbursements contained in the Teleworker Job Creation Act up to the total amount of job training reimbursements that were authorized by the director. The application and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

- (a) The number of qualifying employees required by the act for the project;
- (b) The time period under the act in which the required level must be met;
- (c) The documentation the employer will need to supply when requesting the job training reimbursements under the act;
- (d) The date the application was filed; and
- (e) The maximum amount of job training reimbursements authorized.

Source: Laws 2010, LB1081, § 4.

48-3005 Employer; submit description of training program.

(1) To be eligible to file an application for an agreement with the director under the Teleworker Job Creation Act, the employer shall submit a description of its training program to the director for review.

(2) If the employer's training program meets the requirements to constitute a qualified training program under the act, the director shall approve such program and provide the employer with an approval letter.

Source: Laws 2010, LB1081, § 5.

48-3006 Job training reimbursements; employer; requirements; amount of reimbursements.

(1) Job training reimbursements shall be made to any employer who has an approved application pursuant to the Teleworker Job Creation Act and who trains at least four hundred qualifying employees in a qualified training program within three hundred sixty-five calendar days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker. The employer shall, to the extent of available job positions, give a hiring priority preference, over other similarly qualified applicants, to those applicants who (a) reside in Nebraska counties of less than one hundred thousand inhabitants, as determined by the most recent federal decennial census, with such residence as determined by the statement of the qualifying employee on his or her employment application, or (b) reside in areas of high concentration of poverty within the corporate limits of a city or village consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census. Such job positions shall pay a wage of at least the then-required minimum hourly wage required by federal law. If the employer fails to provide such a hiring priority preference to one or more of the persons entitled to it, then the employer shall lose the right to one job training reimbursement for each such failure.

(2) The amount of the job training reimbursements allowed under subsection (1) of this section shall be three hundred dollars for each new qualifying employee hired by the employer after the application filing date, up to a total of five hundred qualifying employees per project, resulting in a maximum reimbursement per project of one hundred fifty thousand dollars.

Source: Laws 2010, LB1081, § 6.

48-3007 Request; form; contents.

A request for job training reimbursements may be filed annually or quarterly by the employer on a form required by the director. Each request shall contain verification of the number of qualifying employees, designated by project, for which the employer has met the requirements of the Teleworker Job Creation Act, and such amounts shall be paid to the employer upon approval by the director.

Source: Laws 2010, LB1081, § 7.

48-3008 Department of Economic Development; audit employer.

The Department of Economic Development shall, prior to making the job training reimbursement, audit the employer for compliance with the Teleworker Job Creation Act. The department may utilize the subaccount created under subsection (3) of section 81-1201.21 to support the costs of audits and administration of the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 8.

48-3009 Right to reimbursement and agreement under act; not transferable; exception.

(1) The right to job training reimbursements and the agreement under the Teleworker Job Creation Act shall not be transferable except when a project covered by an agreement is transferred by sale or lease to another employer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring employer, as of the date of notification of the director of the completed transfer, shall be entitled to any unused job training reimbursements and to any future job training reimbursements allowable under the act.

Source: Laws 2010, LB1081, § 9.

48-3010 Job training reimbursements; interest not allowed.

Interest shall not be allowable on any job training reimbursements earned under the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 10.

48-3011 No preclusion from receiving tax incentives or other benefits.

Participation in the Teleworker Job Creation Act shall not preclude an employer from receiving tax incentives or other benefits under other federal, state, or local incentive programs.

Source: Laws 2010, LB1081, § 11.

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 websites 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

CHAPTER 49

LAW

Article.

1. Common Law. 49-101.
2. Adoption of Constitutional Amendments. 49-201 to 49-244.
3. Repeal of Statutes; Effect. 49-301 to 49-303.
4. Constitutional Reviewer of Legislative Bills. Repealed.
5. Publication and Distribution of Session Laws and Journals. 49-501 to 49-511.
6. Printing and Distribution of Statutes. 49-601 to 49-618.
7. Statute Revision. 49-701 to 49-771.
8. Definitions, Construction, and Citation. 49-801 to 49-807.
9. Commission on Uniform State Laws. 49-901 to 49-905.
10. Standard Time. Repealed.
11. Conflict of Interest. Repealed.
12. Mail. 49-1201 to 49-1203.
13. Time Zones. 49-1301 to 49-1303.
14. Nebraska Political Accountability and Disclosure Act.
 - (a) General Provisions. 49-1401 to 49-1444.
 - (b) Campaign Practices. 49-1445 to 49-1479.02.
 - (c) Lobbying Practices. 49-1480 to 49-1492.01.
 - (d) Conflicts of Interest. 49-1493 to 49-14,104.
 - (e) Nebraska Accountability and Disclosure Commission. 49-14,105 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.
16. Nebraska Constitutional Revision Commission. Repealed.
17. Constitution of Nebraska. 49-1701.
18. Uniform Unsworn Foreign Declarations Act. 49-1801 to 49-1807.

ARTICLE 1

COMMON LAW

Cross References

Constitutional provisions:

District courts have common-law jurisdiction, see Article V, section 9, Constitution of Nebraska.

Causes of action not provided for in code of civil procedure, see section 25-2224.

Foreign states or governments, common law, how proved, see section 25-1293.

Judicial notice of, see section 25-12,101.

Rule requiring strict construction of statutes in derogation of common law not applicable to code of civil procedure, see section 25-2218.

Survival of causes of action, see section 25-1401.

Section

49-101. Common law; applicability.

49-101 Common law; applicability.

So much of the common law of England as is applicable and not inconsistent with the Constitution of the United States, with the organic law of this state, or with any law passed or to be passed by the Legislature of this state, is adopted and declared to be law within the State of Nebraska.

Source: R.S.1866, c. 7, § 1, p. 31; R.S.1913, § 3697; C.S.1922, § 3085; C.S.1929, § 49-101; R.S.1943, § 49-101.

1. Applicability of common law
2. Conflict with statutory law
3. Inconsistent with needs
4. Miscellaneous

1. Applicability of common law

The common-law writ of error coram nobis exists in this state under this section. *State v. El-Tabech*, 259 Neb. 509, 610 N.W.2d 737 (2000); *Parker v. State*, 178 Neb. 1, 131 N.W.2d 678 (1964); *Hawk v. State*, 151 Neb. 717, 39 N.W.2d 561 (1949); *Swanson v. State*, 148 Neb. 155, 26 N.W.2d 595 (1947).

The common law fixes the rights and duties of riparian proprietors, except as modified by the Constitution or statutes. *Wasserburger v. Coffee*, 180 Neb. 149, 141 N.W.2d 738 (1966).

Common-law rules as to rights and duties of riparian owners, as altered and modified by statute, are in force in this state. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966); *Drainage Dist. No. 1 v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941); *Osterman v. Central Nebraska Public Power & Irr. Dist.*, 131 Neb. 356, 268 N.W. 334 (1936); *Kinthead v. Turgeon*, 74 Neb. 573, 104 N.W. 1061 (1905), reversed on rehearing, 74 Neb. 580, 109 N.W. 744 (1906); *Meng v. Coffee*, 67 Neb. 500, 93 N.W. 713 (1903); *Crawford Co. v. Hathaway*, 67 Neb. 325, 93 N.W. 781 (1903).

Antenuptial contracts were void at common law. *Dorshorst v. Dorshorst*, 174 Neb. 886, 120 N.W.2d 32 (1963).

Common-law writ of prohibition is available to litigants in this state. *Conkling v. DeLany*, 167 Neb. 4, 91 N.W.2d 250 (1958).

Common law was adopted governing relation of landlord and tenant. *Wright v. Barclay*, 151 Neb. 94, 36 N.W.2d 645 (1949).

Doctrine of demonstrative legacies is in force in Nebraska. In re *Estate of Lewis*, 148 Neb. 592, 28 N.W.2d 427 (1947).

Common-law remedy of writ of prohibition is not abolished in Nebraska. *State ex rel. Wright v. Barney*, 133 Neb. 676, 276 N.W. 676 (1937).

In this jurisdiction we have adopted the common law of England as governing the relation of landlord and tenant. *Roberts v. Rogers*, 129 Neb. 298, 261 N.W. 354 (1935).

At common law, there was no incapacity of spendthrifts, and this rule is in force in this state. *Taylor v. Koenigstein*, 128 Neb. 809, 260 N.W. 544 (1935).

Statute adopts the common law of England and not the statutory law. *Brooks v. Kimball County*, 127 Neb. 645, 256 N.W. 501 (1934).

Common law is not in force where inapplicable to our needs or conditions or in conflict with constitutional or statutory provisions. *Bishop v. Liston*, 112 Neb. 559, 199 N.W. 825 (1924).

Common-law barrier to transfer of title to real estate by oral wills still exists in this state. *Maurer v. Reifschneider*, 89 Neb. 673, 132 N.W. 197, Ann. Cas. 1912C 643 (1911).

Doctrine of charitable uses, being administered as part of common-law jurisdiction of courts of chancery of England exercising judicial powers only, has been transplanted to this state, and in administration and enforcement of such trusts, courts can exercise only judiciary powers. *St. James Orphan Asylum v. Shelby*, 60 Neb. 796, 84 N.W. 273 (1900).

Rule of common law relating to lien on chattels is in force, in absence of specific agreement. *Drummond Carriage Co. v. Mills*, 54 Neb. 417, 74 N.W. 966 (1898).

Common law is applicable only insofar as it is suited to the genius, spirit, and objects of its intentions. *Cooney v. Moomaw*, 109 F.Supp. 448 (D. Neb. 1953).

2. Conflict with statutory law

Common-law rule as to incompetency of parties as witnesses has been changed by statute. *Fincham v. Mueller*, 166 Neb. 376, 89 N.W.2d 137 (1958).

Common-law rule as to legitimation of children born out of wedlock has been changed by statute. *Timmerman v. Timmerman*, 163 Neb. 704, 81 N.W.2d 135 (1957).

Common law with respect to partition has been modified by statute in this state. *Baskins v. Krepeik*, 153 Neb. 36, 43 N.W.2d 624 (1950).

Writ of error coram nobis is not expressly abolished by statute but cannot be used where code provides a remedy. *Carlsen v. State*, 129 Neb. 84, 261 N.W. 339 (1935).

Common-law rule giving executor full title and right to dispose of personal estate of deceased does not prevent prosecution of executor for embezzlement. *Pilger v. State*, 120 Neb. 584, 234 N.W. 403, 75 A.L.R. 297 (1931).

Statute, defining aiding and abetting as a distinct crime, prevails over common law. *Guignon v. State*, 101 Neb. 587, 163 N.W. 858 (1917).

Provision of common law, inconsistent with any law passed or to be passed by the Legislature, is not law of this state. *Moran v. Moran*, 101 Neb. 386, 163 N.W. 315 (1917), overruled on rehearing, 101 Neb. 555, 163 N.W. 1071 (1917).

Mortgage by deposit of title deeds without writing is not effective in this state. *Bloomfield State Bank v. Miller*, 55 Neb. 243, 75 N.W. 569 (1898).

Whether writ of prohibition may be allowed in this state, in aid of appellate jurisdiction, is doubtful. *State ex rel. King v. Hall*, 47 Neb. 579, 66 N.W. 642 (1896).

City of Lincoln could not claim sovereign right to priority of payment out of assets of bankrupt trust company under theory that common law authorizes it, inasmuch as such a rule is inconsistent with Nebraska legislation, and the reason on which the common-law rule was based does not exist. *City of Lincoln v. Ricketts*, 84 F.2d 795 (8th Cir. 1936).

3. Inconsistent with needs

Administrator may maintain action for damages after death of his intestate for pain and suffering inflicted on deceased, notwithstanding cause of action did not survive at common law. *Wilfong v. Omaha & C. B. St. Ry. Co.*, 129 Neb. 600, 262 N.W. 537 (1935).

Action for personal injuries resulting from negligence does not abate on death of wrongdoer before commencement of action, but may be brought against his estate. In re *Grainger's Estate*, 121 Neb. 338, 237 N.W. 153, 78 A.L.R. 597 (1931).

Common-law rule of estate by entirety does not prevail in this state. *Kerner v. McDonald*, 60 Neb. 663, 84 N.W. 92 (1900).

Statute of uses is not of the law of this state. *Farmers & Merchants Ins. Co. v. Jensen*, 58 Neb. 522, 78 N.W. 1054 (1899).

Common-law rule of construction of covenants affecting real estate is not in force in this state. *Wattles v. South Omaha Ice & Coal Co.*, 50 Neb. 251, 69 N.W. 785 (1897).

4. Miscellaneous

If a defendant is denied his right to appeal because of counsel's failure to timely file notice of appeal, the proper means to attack such denial is a motion for postconviction relief and not a motion for writ of error coram nobis. A motion for writ of error coram nobis reaches only matters of fact unknown to the applicant at the time of judgment, not discoverable through reasonable diligence, and which, if known by the court, would have prevented entry of judgment. *State v. Johnson*, 243 Neb. 758, 502 N.W.2d 477 (1993).

Absence of statute granting interest in improvements to lessee at time school land lease entered required application of rules of this section. *State v. Bardsley*, 185 Neb. 629, 177 N.W.2d 599 (1970).

Cited in consideration of municipal tort immunity. *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805 (1968).

Doctrine of the right of privacy was not recognized in the common law. *Brunson v. Ranks Army Store*, 161 Neb. 519, 73 N.W.2d 803 (1955).

The common law is flexible, and by its own principles adapts itself to varying conditions. *State v. Tautges, Rerat & Welch*, 146 Neb. 439, 20 N.W.2d 232 (1945).

Notwithstanding common-law rule forbidding action for damages for death by wrongful act, pending action for personal injuries does not abate by death of plaintiff. *Murray v. Omaha Transfer Co.*, 98 Neb. 482, 153 N.W. 488 (1915), affirming 95 Neb. 175, 145 N.W. 360 (1914).

Term common law refers to that general system of law prevailing in England and most of the United States, by derivation from England, as distinguished from Roman or civil law system, in force in this territory prior to Louisiana Purchase. *Williams v. Miles*, 68 Neb. 463, 94 N.W. 705 (1903), 96 N.W. 151 (1903).

Rule that in adopting a statute from another state Legislature also adopts construction put upon it by that state is not absolute. *Rhea v. State*, 63 Neb. 461, 88 N.W. 789 (1902).

Whether rule of common law, that statutes in derogation thereof are to be strictly construed, is in force in this state, is doubted. *Kearney Electric Co. v. Laughlin*, 45 Neb. 390, 63 N.W. 941 (1895).

The plaintiff's characterization of his action as one seeking damages for misappropriation of his name and image could not serve as a means to escape the rule announced by the Nebraska Supreme Court that under Nebraska law one has no right to control the use of his name and image. *Carson v. National Bank of Commerce Trust & Sav.*, 501 F.2d 1082 (8th Cir. 1974).

ARTICLE 2

ADOPTION OF CONSTITUTIONAL AMENDMENTS

Cross References

Constitutional provisions:

Constitutional convention, proposal for, submitted by Legislature, see Article XVI, section 2, Constitution of Nebraska.

Initiated proposals, see Article III, sections 2 and 4, Constitution of Nebraska.

Legislature, proposals by, see Article XVI, section 1, Constitution of Nebraska.

Advisory vote of people on amendments to Constitution of the United States, see section 32-1417.

Initiated proposals, procedure, see sections 32-1401 to 32-1416.

Section

- 49-201. Constitutional amendments; proposal by Legislature; resolution.
- 49-202. Amendments proposed by Legislature; publication.
- 49-202.01. Amendments proposed by Legislature; explanatory statement; requirements.
- 49-203. Amendments proposed by Legislature; manner of submission.
- 49-204. Amendments proposed by Legislature; election; returns; canvass.
- 49-205. Amendments proposed by Legislature; election; vote required for adoption; proclamation by Governor.
- 49-206. Amendments; how enrolled and numbered; duties of Secretary of State.
- 49-207. Amendments; more than one submitted; order of submission; form of ballot; duty of Secretary of State.
- 49-208. Amendments; official and sample ballots; printing.
- 49-209. Amendments; form of ballots; when transmitted.
- 49-210. Amendments; election; duties of county clerk or election commissioner.
- 49-211. Failure of election officers to make returns; penalty.
- 49-212. Constitutional convention; special election; delegates; number.
- 49-213. Constitutional convention; proclamation; notice; how conducted; returns.
- 49-214. Constitutional convention; candidates nominated by petition.
- 49-215. Constitutional convention; candidates; petition; contents.
- 49-216. Constitutional convention; petition; oath of signers.
- 49-217. Constitutional convention; candidates; petition; statements as to candidates.
- 49-218. Constitutional convention; candidates; petition; form.
- 49-219. Constitutional convention; candidates; petitions; time of filing.
- 49-220. Constitutional convention; candidates; nonpartisan primary; held, when.
- 49-221. Constitutional convention; primary election; proclamation; notice; returns.
- 49-222. Constitutional convention; delegates; assemble; time; place.
- 49-223. Constitutional convention; delegates; vacancy; how filled.
- 49-224. Constitutional convention; delegates; incumbent of public office not disqualified.
- 49-225. Constitutional convention; rules and regulations; adopt.
- 49-226. Constitutional convention; proceedings; debate; record.
- 49-227. Constitutional convention; submission of proposals; time; form; manner.
- 49-228. Constitutional convention; elections; Election Act applicable.
- 49-229. Constitutional convention; delegates; election; ballots; printing; distribution.
- 49-230. Constitutional convention; delegates; compensation.
- 49-231. Constitutional convention; information; duty of state, county, and political subdivision officer to furnish; penalty.
- 49-232. Constitutional convention; preliminary survey committee; appointment; duties.

Section	
49-233.	Constitutional convention; preliminary survey committee; expenses.
49-234.	Constitutional convention; delegates; preliminary survey committee; compensation; expenses; payment.
49-235.	Amendments proposed by the Legislature; special election; vote of members; date held.
49-236.	Amendments proposed by the Legislature; failure to receive required vote of members for special election; placed on final reading.
49-237.	Amendments proposed by the Legislature; special election; expenses; appropriate funds.
49-238.	Amendments proposed by the Legislature; special election; how conducted.
49-239.	Repealed. Laws 1980, LB 741, § 1.
49-240.	Repealed. Laws 1980, LB 741, § 1.
49-241.	Repealed. Laws 1980, LB 741, § 1.
49-242.	Repealed. Laws 1980, LB 741, § 1.
49-243.	Repealed. Laws 1980, LB 741, § 1.
49-244.	Repealed. Laws 1980, LB 741, § 1.

49-201 Constitutional amendments; proposal by Legislature; resolution.

Amendments to the Constitution may be proposed by resolution of the Legislature, and if the same shall be voted for by three-fifths of the members thereof, in the manner provided by Article XVI, section 1, of the Constitution, the amendment or amendments proposed shall be submitted to the electors of this state for approval or rejection in the manner hereinafter provided.

Source: Laws 1877, § 1, p. 114; R.S.1913, § 3698; C.S.1922, § 3086; Laws 1925, c. 112, § 1, p. 303; C.S.1929, § 49-201; R.S.1943, § 49-201.

Because of insufficient publication of notice, attempted constitutional amendment, to exclude schools of deaf and blind from jurisdiction of Board of Control, was ineffective. State ex rel Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

49-202 Amendments proposed by Legislature; publication.

Such proposed amendment or amendments shall be published by the Secretary of State once each week for three weeks, in at least one newspaper to be designated by the Governor, in each county where a newspaper is published, immediately preceding the next election of members of the Legislature, with notice prefixed thereto that at such election such proposed amendment or amendments will be submitted to the electors of this state for approval or rejection.

Source: Laws 1877, § 2, p. 114; Laws 1895, c. 3, § 1, p. 67; Laws 1909, c. 2, § 1, p. 54; R.S.1913, § 3699; C.S.1922, § 3087; Laws 1925, c. 112, § 2, p. 303; C.S.1929, § 49-202; R.S.1943, § 49-202; Laws 1953, c. 170, § 1, p. 545.

Cross References

For required publication, see Article XVI, section 1, Constitution of Nebraska.

49-202.01 Amendments proposed by Legislature; explanatory statement; requirements.

(1) When any proposal submitted by the Legislature is placed on the ballot for a vote of the electorate of the entire state, a statement in clear, concise language explaining the effect of a vote for and a vote against the proposal shall be printed immediately preceding the ballot title. Such statement shall be prepared by the Executive Board of the Legislative Council and submitted to the Secretary of State at least four months prior to the general election for

certification to the election commissioners and county clerks along with the ballot titles. Such statement shall be printed in italics and shall be so worded as to not be intentionally an argument or likely to create prejudice either for or against the proposal. The statement shall also be published in italics preceding the ballot title on each proposal published pursuant to section 49-202.

(2) The four-month requirement prescribed in subsection (1) of this section shall not apply to any legislative proposal submitted to the electorate at a special election as provided in Article XVI, section 1, of the Constitution of Nebraska.

Source: Laws 1994, LB 76, § 559.

49-203 Amendments proposed by Legislature; manner of submission.

At such election on the ballot of each elector voting shall be written or printed the words For proposed amendment to the Constitution, and Against proposed amendment to the Constitution, unless the Legislature in the resolution providing for the submission of a proposed amendment or amendments shall otherwise provide.

Source: Laws 1877, § 3, p. 114; R.S.1913, § 3700; C.S.1922, § 3088; Laws 1925, c. 112, § 3, p. 304; C.S.1929, § 49-203; R.S.1943, § 49-203.

49-204 Amendments proposed by Legislature; election; returns; canvass.

Public notice that the proposed amendment or amendments to the Constitution of Nebraska are to be voted upon shall be given as provided in the Constitution. The judges and clerks of election shall make return to the county clerk or election commissioner of their respective counties of (1) the number of electors voting at such election at which such amendments are voted upon, (2) the number of electors who voted for such amendment or amendments, and (3) the number of electors who voted against such amendment or amendments. The several county clerks or election commissioners in the different counties shall make return to the board of state canvassers provided for in section 32-1037 in the same manner and within the same time that they are required to make return of votes cast for officers described in such section. All such returns shall be directed to the Secretary of State and transmitted to him or her in a separate abstract from the abstract and return of votes cast for the officers named in such section.

The returns from the election officers shall be canvassed by the county canvassing board which canvasses the other election returns in the county. The county canvassing board shall determine, from the returns made by the judges and clerks of election, the number of electors voting at the election, the number of electors voting at such election for the amendment or amendments, and the number of electors who voted against the amendment or amendments. The county canvassing board shall enter its findings in the book in which the canvass of other election returns is made, and from the findings so made, the county clerk or election commissioner shall make the returns to the board of state canvassers as provided in this section.

Source: Laws 1877, § 4, p. 115; Laws 1895, c. 4, § 1, p. 69; Laws 1897, c. 5, § 1, p. 45; Laws 1907, c. 1, § 1, p. 49; R.S.1913, § 3701;

C.S.1922, § 3089; C.S.1929, § 49-204; R.S.1943, § 49-204; Laws 1959, c. 232, § 1, p. 812; Laws 1973, LB 554, § 1; Laws 1994, LB 76, § 558.

Section is constitutional, and it was the duty of state board of canvassers to canvass returns on constitutional amendments. State ex rel. Oldham v. Dean, 84 Neb. 344, 121 N.W. 719 (1909).

49-205 Amendments proposed by Legislature; election; vote required for adoption; proclamation by Governor.

If a majority of the electors voting on any such amendment adopt the same, provided the votes cast in favor of such amendment shall not be less than thirty-five percent of the total votes cast at such election, the Governor, within ten days after the result is ascertained, shall make proclamation declaring the proposed amendment or amendments to be a part of the Constitution of the state.

Source: Laws 1877, § 5, p. 115; R.S.1913, § 3702; C.S.1922, § 3090; Laws 1925, c. 112, § 4, p. 304; C.S.1929, § 49-205; R.S.1943, § 49-205.

Constitutional amendment, to exclude schools of deaf and blind from jurisdiction of Board of Control, was ineffective for failure to comply with requirements. State ex rel. Hall v. Cline, 118 Neb. 150, 224 N.W. 6 (1929).

49-206 Amendments; how enrolled and numbered; duties of Secretary of State.

Whenever any amendments to the Constitution shall have been proposed to and adopted by the electors of this state, as provided in sections 49-201 to 49-205, the same shall be enrolled and numbered in the order of time in which they may be adopted, and preserved by the Secretary of State among the public records of his office.

Source: Laws 1877, § 6, p. 115; R.S.1913, § 3703; C.S.1922, § 3091; C.S.1929, § 49-206; R.S.1943, § 49-206.

49-207 Amendments; more than one submitted; order of submission; form of ballot; duty of Secretary of State.

Whenever at a session of the Legislature more than one amendment to the Constitution or proposition is submitted to a vote of the people, it shall be the duty of the Secretary of State to provide the form of the ballots containing such propositions or proposed amendments, which are to be submitted to a vote of the people. The Secretary of State shall number the amendments consecutively in the order they are received from the Governor. If more than one amendment to the Constitution or proposition is received at the same time, they shall be submitted in the order they were approved by the Legislature.

Source: Laws 1895, c. 5, § 1, p. 69; R.S.1913, § 3704; C.S.1922, § 3092; C.S.1929, § 49-207; R.S.1943, § 49-207; Laws 1955, c. 191, § 1, p. 552.

49-208 Amendments; official and sample ballots; printing.

The ballots shall be printed, both official and sample, in conformity with the provisions of the Election Act regulating ballots at a general election.

Source: Laws 1895, c. 5, § 2, p. 70; R.S.1913, § 3705; C.S.1922, § 3093; C.S.1929, § 49-208; R.S.1943, § 49-208; Laws 1953, c. 171, § 1, p. 546; Laws 1972, LB 661, § 77; Laws 1994, LB 76, § 560.

Cross References

Election Act, see section 32-101.

49-209 Amendments; form of ballots; when transmitted.

The form of the ballots prepared in conformity with sections 49-202.01, 49-207, and 49-208 shall be transmitted to the county clerks and election commissioners of the several counties of this state at least fifty days before the election at which such proposition or amendments are to be voted upon.

Source: Laws 1895, c. 5, § 3, p. 70; R.S.1913, § 3706; C.S.1922, § 3094; C.S.1929, § 49-209; R.S.1943, § 49-209; Laws 1961, c. 242, § 1, p. 722; Laws 1973, LB 554, § 2; Laws 1994, LB 76, § 561; Laws 1997, LB 764, § 109.

49-210 Amendments; election; duties of county clerk or election commissioner.

The county clerk or election commissioner of each county shall see that the list of voters book and the official summary of votes cast furnished each voting precinct are suitably printed and ruled so as to enable the election officers to make returns of the votes cast on the various propositions or amendments submitted and to enable the election officers to make full and complete returns of the facts required of them to be made to the county clerk or election commissioner.

Source: Laws 1895, c. 5, § 6, p. 71; Laws 1897, c. 5, § 1, p. 46; R.S.1913, § 3707; C.S.1922, § 3095; C.S.1929, § 49-210; R.S.1943, § 49-210; Laws 1973, LB 554, § 3; Laws 1994, LB 76, § 562.

49-211 Failure of election officers to make returns; penalty.

Should the officers of election of any election precinct refuse or fail to make return of the votes cast for and against any proposition or proposed amendment to the Constitution, they shall be guilty of a Class V misdemeanor.

Source: Laws 1895, c. 5, § 7, p. 71; R.S.1913, § 3708; C.S.1922, § 3096; C.S.1929, § 49-211; R.S.1943, § 49-211; Laws 1977, LB 40, § 305.

49-212 Constitutional convention; special election; delegates; number.

When the question of calling a constitutional convention to revise, amend, or change the Constitution of Nebraska is submitted to the electors of the state, and a majority of the electors voting for or against the same vote for a convention, the Legislature shall at its next session provide by law for calling the same and for holding a special election on the first Tuesday after the first Monday in November in the year following the year the electors voted to call a constitutional convention. At such special election, the electors of each legislative district of the state shall elect two delegates to such convention, hereinafter referred to as members of the constitutional convention, who shall have the qualifications of electors.

Source: Laws 1953, c. 173, § 1, p. 548.

49-213 Constitutional convention; proclamation; notice; how conducted; returns.

The election shall be proclaimed and notice thereof given by the same persons, and in the same manner, as in general elections, and the election shall in all respects be conducted, the returns thereof made, and the results certified as is provided by law in the election of members to the Legislature, except as otherwise provided by sections 49-212 to 49-234.

Source: Laws 1953, c. 173, § 2, p. 548.

49-214 Constitutional convention; candidates nominated by petition.

Candidates for members of the constitutional convention shall be nominated by nominating petitions. The nominating petitions shall be in writing and addressed to the Secretary of State. The nominating petitions shall be signed by not less than five percent of the qualified electors of the legislative district. The percentage shall be based on the number of electors voting in the legislative district at the last preceding general election. In no case shall the number of signers to the petition be less than one hundred.

Source: Laws 1953, c. 173, § 3, p. 549.

49-215 Constitutional convention; candidates; petition; contents.

The petition shall contain a provision to the effect that each signer thereof recommends the candidate or candidates for the nomination contained therein. The names of more than two candidates shall not be set forth in any one petition. Signers shall conform to sections 32-629 and 32-630. No elector shall sign his or her name to the petition or petitions for the nomination of more than two candidates. If an elector has signed his or her name for the nomination of more than two candidates, his or her name shall not be counted for any of such candidates.

Source: Laws 1953, c. 173, § 4, p. 549; Laws 1994, LB 76, § 563.

49-216 Constitutional convention; petition; oath of signers.

Five of the signers to each separate petition shall swear before a notary public, or other officer entitled to administer oaths, that the petition is bona fide in every respect to the best of their knowledge and belief, and such oath shall be annexed to the petition. If the petition contains less than five signers, the oath shall be signed by all the signers.

Source: Laws 1953, c. 173, § 5, p. 549.

49-217 Constitutional convention; candidates; petition; statements as to candidates.

In addition to containing the name of the candidate, the petition shall state as to each candidate:

- (1) That he is a candidate for members of the constitutional convention for the legislative district in which the signatures are obtained;
- (2) His place of residence with street and number thereof, if any; and
- (3) A declaration by the candidate that he will qualify if elected.

Source: Laws 1953, c. 173, § 6, p. 549.

49-218 Constitutional convention; candidates; petition; form.

Nominating petitions shall comply with section 32-628 and shall be in substantially the following form:

I,, do hereby announce myself as a candidate for member of the constitutional convention to be convened December, 20..., I reside at in the legislative district, and I will qualify as a member of the constitutional convention if elected.

.....

To the Secretary of State

We, the undersigned electors of the legislative district of Nebraska, do hereby petition that be named as a member of the constitutional convention to be convened December, 20..., from the legislative district, and we do each hereby separately recommend his or her election as such.

Name

Address

.....
.....
.....

State of Nebraska)
) ss.
..... County)

The undersigned having signed the foregoing petition and being first duly sworn on oath state that the foregoing petition is bona fide in every respect to the best of our knowledge and belief.

.....
.....
.....
.....
.....

Subscribed and sworn to before me this day of 20.....

.....
Notary Public

The Secretary of State shall prepare and have printed suitable blank forms. Supplies thereof shall be mailed to the several county clerks.

Source: Laws 1953, c. 173, § 7, p. 550; Laws 1994, LB 76, § 564; Laws 2004, LB 813, § 20.

49-219 Constitutional convention; candidates; petitions; time of filing.

The nominating petitions shall be filed with the Secretary of State not earlier than July 1 of the year the election is to be held and not later than August 1 of the same year.

Source: Laws 1953, c. 173, § 8, p. 551.

49-220 Constitutional convention; candidates; nonpartisan primary; held, when.

If in any legislative district, the number of persons nominated by nominating petitions exceeds four to be elected delegates to the constitutional convention from such district, then a nonpartisan primary shall be held in such district on the third Tuesday after the first Monday in September before the special election for such candidates. At such primary the four persons receiving the greatest number of votes shall be chosen from those nominated by nominating petitions. Those so chosen shall be deemed nominated for delegates, and their names only shall appear on the ballot at the special election. At such primary election each elector shall be entitled to vote for two candidates. No party or political designation shall appear on the ballots, either at the primary or special election provided for by sections 49-212 to 49-234.

Source: Laws 1953, c. 173, § 9, p. 551.

49-221 Constitutional convention; primary election; proclamation; notice; returns.

Primary elections shall be proclaimed and notice thereof given by the same persons and in the same manner as provided by law in the case of a regular state primary or general election. Returns thereof shall be made, the results thereof certified, and the elections otherwise conducted as provided by law in case of primary and general elections for the selection of candidates for members to the Legislature, insofar as such laws are applicable, unless otherwise provided for by sections 49-212 to 49-234.

Source: Laws 1953, c. 173, § 10, p. 551.

49-222 Constitutional convention; delegates; assemble; time; place.

The elected members of the constitutional convention shall assemble in the legislative chamber in the city of Lincoln on the first Tuesday in December immediately following the election at noon for the purpose of temporary organization. The convention shall be called to order by the Secretary of State.

Source: Laws 1953, c. 173, § 11, p. 552.

49-223 Constitutional convention; delegates; vacancy; how filled.

If vacancies occur, the same shall be filled in the same manner as vacancies are filled for members of the Legislature.

Source: Laws 1953, c. 173, § 12, p. 552.

49-224 Constitutional convention; delegates; incumbent of public office not disqualified.

Incumbency of any other public office, either elective or appointive, shall not disqualify the person holding the same from being a member of the constitutional convention.

Source: Laws 1953, c. 173, § 13, p. 552.

49-225 Constitutional convention; rules and regulations; adopt.

The constitutional convention shall have authority to (1) determine its own rules and proceedings; (2) elect such officers as it may deem necessary for the proper and convenient transaction of the business of the convention and prescribe their duties; (3) make provisions for the publication of its proceedings

or any part thereof; and (4) provide for the securing of a copyright of any such publication for the state.

Source: Laws 1953, c. 173, § 14, p. 552.

49-226 Constitutional convention; proceedings; debate; record.

The proceedings and debates of the convention shall be made a matter of record.

Source: Laws 1953, c. 173, § 15, p. 552.

49-227 Constitutional convention; submission of proposals; time; form; manner.

The convention shall fix and prescribe the time, form, and manner of submitting to the electors of the state any proposal to revise, amend, or change the Constitution of Nebraska.

Source: Laws 1953, c. 173, § 16, p. 552.

49-228 Constitutional convention; elections; Election Act applicable.

All the provisions of the Election Act, including corrupt practices, shall apply to all of the elections provided for by sections 49-212 to 49-234 insofar as they are applicable, except there shall be but a single election board to supervise the elections and count the ballots.

Source: Laws 1953, c. 173, § 17, p. 552; Laws 1994, LB 76, § 565.

Cross References

Election Act, see section 32-101.

49-229 Constitutional convention; delegates; election; ballots; printing; distribution.

The ballots for delegates to the constitutional convention shall be printed and distributed in the same manner as ballots for members of the Legislature in the primary election.

Source: Laws 1953, c. 173, § 18, p. 553.

49-230 Constitutional convention; delegates; compensation.

The members of the constitutional convention shall each receive twelve hundred dollars and the same mileage as authorized in section 81-1176 for state employees.

Source: Laws 1953, c. 173, § 19, p. 553; Laws 1981, LB 204, § 85.

49-231 Constitutional convention; information; duty of state, county, and political subdivision officer to furnish; penalty.

It shall be the duty of every state, county, and political subdivision officer to promptly transmit any information at his command which either the convention or preliminary survey committee may require of him. If any officer shall fail or refuse to comply with any of the provisions of this section, he shall be guilty of a Class III misdemeanor.

Source: Laws 1953, c. 173, § 20, p. 553; Laws 1977, LB 40, § 306.

49-232 Constitutional convention; preliminary survey committee; appointment; duties.

For the purpose of aiding the convention in the discharge of its duties, the Supreme Court of the State of Nebraska shall, within thirty days after the proclamation of the Governor that the calling of a constitutional convention has been approved by the electors of this state, appoint a preliminary survey committee to consist of five members. The committee shall compile and tabulate information relating to the constitutions of the different states or of other constitutional governments and such other information as the committee shall deem pertinent to the problems to be dealt with by the constitutional convention.

Source: Laws 1953, c. 173, § 21, p. 553.

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.

49-234 Constitutional convention; delegates; preliminary survey committee; compensation; expenses; payment.

The compensation and mileage of the members of the constitutional convention, provided for by section 49-230, shall be paid by warrant on the State Treasurer, upon vouchers duly certified by the presiding officer of the convention. The expenses of the preliminary survey committee, provided for by section 49-233, shall be paid in the same manner upon the certificate of the Chief Justice of the Supreme Court.

Source: Laws 1953, c. 173, § 23, p. 554.

49-235 Amendments proposed by the Legislature; special election; vote of members; date held.

A special state election may be called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting proposed amendments to the Constitution to the electors. Such election shall be held on a date specified by the Legislature, which date shall fall on a Tuesday and be not less than sixty days after passage of the act calling such election.

Source: Laws 1969, c. 260, § 1, p. 1002; Laws 1988, LB 588, § 2.

49-236 Amendments proposed by the Legislature; failure to receive required vote of members for special election; placed on final reading.

When any act before the Legislature proposes an amendment to the Constitution and proposes calling a special election for submission of such proposal, and such act on final reading receives a favorable vote of less than four-fifths of the members elected to the Legislature, the act shall then be amended to provide for submission of such proposition at the next election of members of the Legislature, and again be placed on final reading. If such act receives a

favorable vote of three-fifths of the members elected to the Legislature, the proposition shall be submitted to the electors as provided therein.

Source: Laws 1969, c. 260, § 2, p. 1002.

49-237 Amendments proposed by the Legislature; special election; expenses; appropriate funds.

When the Legislature calls a special state election to submit a proposed amendment to the Constitution to the electors on a date other than the statewide primary election as provided in section 32-401, the Legislature shall appropriate to the Secretary of State sufficient funds to pay all expenses of such election. The county clerk or election commissioner in each county shall certify to the Secretary of State all expenses incurred in conducting such election. The Secretary of State shall transmit payment for such expenses to the county clerks or election commissioners who shall then pay the expenses incurred in their counties.

Source: Laws 1969, c. 260, § 3, p. 1003; Laws 1997, LB 526, § 2.

49-238 Amendments proposed by the Legislature; special election; how conducted.

All pertinent provisions of the Election Act and of Chapter 49, article 2, pertaining to elections, including publication of notice, form of ballot, and canvassing of returns, shall be applicable to special state elections called pursuant to sections 49-235 to 49-238. The Secretary of State may call county canvassing boards and the board of state canvassers into special sessions to canvass votes cast pursuant to such sections. The Secretary of State may take all necessary action to implement such sections.

Source: Laws 1969, c. 260, § 4, p. 1003; Laws 1994, LB 76, § 566.

Cross References

Election Act, see section 32-101.

49-239 Repealed. Laws 1980, LB 741, § 1.

49-240 Repealed. Laws 1980, LB 741, § 1.

49-241 Repealed. Laws 1980, LB 741, § 1.

49-242 Repealed. Laws 1980, LB 741, § 1.

49-243 Repealed. Laws 1980, LB 741, § 1.

49-244 Repealed. Laws 1980, LB 741, § 1.

ARTICLE 3

REPEAL OF STATUTES; EFFECT

Section

49-301. Repeal of statutes; pending actions not affected.

49-302. Repeal of law repealing former law; effect.

49-303. Repeal of statutes; deferred operative date; effect.

49-301 Repeal of statutes; pending actions not affected.

Whenever a statute shall be repealed, such repeal shall in no manner affect pending actions founded thereon, nor causes of action not in suit that accrued prior to any such repeal, except as may be provided in such repealing statute.

Source: G.S.1873, c. 79, § 2, p. 1056; R.S.1913, § 3709; C.S.1922, § 3097; C.S.1929, § 49-301; R.S.1943, § 49-301.

1. Pending actions
2. Causes of action not in suit
3. Construction of statutes
4. Miscellaneous

1. Pending actions

An administrative proceeding is a "pending action" within the meaning of this section when the agency's final order is rendered. *Morris v. Wright*, 221 Neb. 837, 381 N.W.2d 139 (1986); *In re Application of Ochsner*, 216 Neb. 480, 344 N.W.2d 632 (1984).

A pending action before an administrative board is not a "pending action" within the meaning of general savings statute. *Schilke v. School Dist. No. 107*, 207 Neb. 448, 299 N.W.2d 527 (1980).

A petition to detach land from a school district filed with the board created by section 79-403, is not a pending action within the meaning of this section. *Clark v. Sweet*, 187 Neb. 232, 188 N.W.2d 889 (1971).

Rights under statutes repealed were preserved in pending proceedings before the State Railway Commission. *United Mineral Products Co. v. Nebraska Railroads*, 177 Neb. 802, 131 N.W.2d 388 (1964).

Law abolishing deficiency judgments in foreclosure suits does not apply to pending actions. *Arnold v. Hawley*, 128 Neb. 766, 260 N.W. 284 (1935); *Helfrich v. Baxter*, 128 Neb. 281, 258 N.W. 532 (1935).

It is not presumed that, in repeal of criminal statute, Legislature intended to cause dismissal of pending prosecution. *Lower v. State*, 109 Neb. 590, 191 N.W. 674 (1923).

Action foreclosing mortgage and for deficiency is pending action. *Hanscom v. Meyer*, 61 Neb. 798, 86 N.W. 381 (1901).

Repeal of statute will not affect pending suit to enforce right founded thereon. *Thompson v. West*, 59 Neb. 677, 82 N.W. 13 (1900).

Effect of repeal on pending proceeding, and legislative powers, is discussed. *Kleckner v. Turk*, 45 Neb. 176, 63 N.W. 469 (1895).

A suit pending to enforce a right or remedy conferred solely by statute is abated by the unconditional repeal of such statute before judgment. *Globe Pub. Co. v. State Bank of Nebraska at Crete*, 41 Neb. 175, 59 N.W. 683 (1894).

2. Causes of action not in suit

General saving statute preserves right of action on claim for deficiency judgment in suit to foreclose mortgage not due nor in litigation at time Legislature repealed statute permitting deficiency judgment. *Vlazny v. Dittrich*, 136 Neb. 266, 285 N.W. 697 (1939); *Filley v. Mancuso*, 135 Neb. 403, 281 N.W. 850 (1938); *First Trust Co. v. Eastridge Club*, 134 Neb. 785, 279 N.W. 720 (1938).

Right to deficiency judgment on a mortgage obligation created prior to amendment of law regulating foreclosure proceedings is preserved. *Vlazny v. Dittrich*, 136 Neb. 266, 285 N.W. 697 (1939).

Repeal of statute permitting recovery of a deficiency judgment does not prevent action to revive a dormant deficiency judgment. *McCormack v. Murray*, 133 Neb. 125, 274 N.W. 383 (1937).

The general saving statute preserves right of action on a claim for deficiency judgment in suit to foreclose a mortgage not due nor in litigation at time act was passed without a special saving clause. *Stowers v. Stuck*, 131 Neb. 409, 268 N.W. 310 (1936).

Repeal of statute relating to claims against bank depositors' guaranty fund did not affect claim already pending. *State ex rel. Spillman v. Security State Bank of Eddyville*, 116 Neb. 223, 216 N.W. 803 (1927).

Right to a deficiency judgment in an action based upon a mortgage executed before, but matured after, act of 1897 abolishing deficiency judgments was preserved. *Burrows v. Vanderbergh*, 69 Neb. 43, 95 N.W. 57 (1903).

Section relates only to causes of action accrued before such repeal. *City of Lincoln v. First Nat. Bank of Lincoln*, 67 Neb. 401, 93 N.W. 698 (1903).

3. Construction of statutes

The simultaneous repeal and reenactment of substantially the same statutory provisions is ordinarily construed to be an affirmation or continuation of the original provisions rather than a true repeal. Where a statute has been repealed and substantially reenacted with additions or changes, the additions or changes are treated as amendments effective from the time the new statute goes into effect. *Dairyland Power Co-op v. State Bd. of Equal.*, 238 Neb. 696, 472 N.W.2d 363 (1991).

A general savings statute providing that if a statute is repealed such repeal shall in no manner affect pending actions nor causes of action not in suit which accrued prior to such repeal, except as may be provided in the repealing statute, relates to substantive and not procedural law. *Denver Wood Products Co. v. Frye*, 202 Neb. 286, 275 N.W.2d 67 (1979).

The rule that punishment for an act is mitigated by amendment before final judgment does not apply where a new statute does not merely lessen the punishment but defines new categories of crimes and taken as a whole evidences a legislative intent that the penalty provision thereof not apply retroactively. *State v. Trowbridge*, 194 Neb. 582, 234 N.W.2d 598 (1975).

This saving clause on appeal applies to both civil and criminal statutes. *State v. Goham*, 187 Neb. 34, 187 N.W.2d 305 (1971).

Where a criminal statute is amended by mitigating the punishment after commission of a prohibited act but before final judgment, the punishment is that provided by the amendatory act unless the Legislature has specifically provided otherwise. *State v. Randolph*, 186 Neb. 297, 183 N.W.2d 225 (1971).

Repeal of a statute does not affect pending cases, nor accrued causes of action except as may be provided in the repealing statute. *State v. Duitsman*, 186 Neb. 39, 180 N.W.2d 685 (1970).

This section does not apply when the Legislature expressly provides that repealing act shall apply retroactively. *Davis v. General Motors Acceptance Corp.*, 176 Neb. 865, 127 N.W.2d 907 (1964).

General saving statute relates to substantive and not to procedural law. *Lindgren v. School Dist. of Bridgeport*, 170 Neb. 279, 102 N.W.2d 599 (1960).

The general saving clause applies as though it were expressly incorporated in a legislative act. *State ex rel. City of Grand Island v. Union Pacific R. R. Co.*, 152 Neb. 772, 42 N.W.2d 867 (1950).

Statutes in *pari materia* should be construed together. *State v. Omaha Elevator Co.*, 75 Neb. 637, 106 N.W. 979 (1906), 110 N.W. 874 (1906).

That accrued prior to any such repeal refers to time that obligation, out of which action arose, came into existence. *Hunter v. Lang*, 5 Neb. Unof. 323, 98 N.W. 690 (1904).

4. Miscellaneous

This section points the way for the Legislature in dealing with a resolution as distinguished from a statute. *State v. Goham*, 191 Neb. 639, 216 N.W.2d 869 (1974).

Where, in amending a statute, the Legislature specifically provides that such amendment shall take effect immediately, and shall apply to pending cases and to all cases hereafter brought, such act is controlling over general saving clause. *City*

of *Fremont v. Dodge County*, 130 Neb. 856, 266 N.W. 771 (1936).

Effect of repealing clause that certain sections and all acts and parts of acts in conflict are repealed is discussed. *State ex rel. Adair v. Drexel*, 74 Neb. 776, 105 N.W. 174 (1905).

Interpretation of statute by court of last resort is binding upon all departments of government. *State ex rel. Norton v. Van Camp*, 36 Neb. 91, 54 N.W. 113 (1893).

Where intention is not doubtful and amendatory act is not incongruous with title and scope of amended statute, amendment is valid. *Fenton v. Yule*, 27 Neb. 758, 43 N.W. 1140 (1889).

49-302 Repeal of law repealing former law; effect.

Whenever a law shall be repealed, which repealed a former law, the former law shall not thereby be revived unless specially provided for.

Source: G.S.1873, c. 79, § 3, p. 1056; R.S.1913, § 3710; C.S.1922, § 3098; C.S.1929, § 49-302; R.S.1943, § 49-302.

History of the enactment and repeal by the Nebraska Legislature of statutes relative to writ of certiorari in no manner supports the conclusion that the effect thereof is to abolish the writ of prohibition. *State ex rel. Wright v. Barney*, 133 Neb. 676, 276 N.W. 676 (1937).

Act amendatory of unconstitutional act is invalid. *City of Plattsmouth v. Murphy*, 74 Neb. 749, 105 N.W. 293 (1905).

Repeals by implication are not favored and such construction of a statute repealing another will not be adopted unless made necessary by evident intent of Legislature. *Schafer v. Schafer*, 71 Neb. 708, 99 N.W. 482 (1904); *Dawson County v. Clark*, 58 Neb. 756, 79 N.W. 822 (1899).

Where one section refers to another for its powers, provisions referred to become part of section and remain part thereof, although section referred to is repealed. *Shull v. Barton*, 58 Neb. 741, 79 N.W. 732 (1899).

Abortive attempt to limit operation of existing statute does not change its force. *Barker v. Potter*, 55 Neb. 25, 75 N.W. 57 (1898).

Legislative act, containing provision repugnant to an existing law, repeals that law by implication. *State ex rel. Smythe v. Magney*, 52 Neb. 508, 72 N.W. 1006 (1897).

Repeal and reenactment, clearly intended to continue uninterrupted operation of old statute, will be so construed. *State v. Wish*, 15 Neb. 448, 19 N.W. 686 (1884).

49-303 Repeal of statutes; deferred operative date; effect.

When any act of the Legislature provides for a deferred operative date and also contains a repeal section, the action of a subsequent Legislature in postponing or accelerating such operative date whether by reference to the session laws or to the sections of the act as caused to be printed by the Revisor of Statutes shall act as a corresponding postponement or acceleration of the operative date of the repeal section without the necessity of specific reference thereto unless the Legislature specifically and clearly expresses a different intent.

Source: Laws 1979, LB 70, § 3.

ARTICLE 4

CONSTITUTIONAL REVIEWER OF LEGISLATIVE BILLS

Section

- 49-401. Repealed. Laws 1947, c. 179, § 7.
- 49-402. Repealed. Laws 1947, c. 179, § 7.
- 49-403. Repealed. Laws 1947, c. 179, § 7.
- 49-404. Repealed. Laws 1947, c. 179, § 7.

49-401 Repealed. Laws 1947, c. 179, § 7.

49-402 Repealed. Laws 1947, c. 179, § 7.

49-403 Repealed. Laws 1947, c. 179, § 7.

49-404 Repealed. Laws 1947, c. 179, § 7.

ARTICLE 5
PUBLICATION AND DISTRIBUTION OF
SESSION LAWS AND JOURNALS

Cross References

Constitutional provisions:

Journal, legislative, publication of, see Article III, section 11, Constitution of Nebraska.

Session laws, publication of, see Article III, section 27, Constitution of Nebraska.

Secretary of State, duties of, see sections 32-1415 and 84-502.

Section

- 49-501. Session laws and journals; distribution by Secretary of State.
 49-501.01. Session laws and journal; Clerk of the Legislature; compile; contents.
 49-502. Session laws and journals; distribution by county clerk to judges, county officers, and county law library.
 49-503. Requisition by county clerk.
 49-504. Copies in possession of county officers; delivery to successors.
 49-505. Distribution to public libraries.
 49-506. Distribution by Secretary of State.
 49-507. Distribution by State Librarian.
 49-508. Distribution to new members of Legislature.
 49-508.01. Repealed. Laws 2000, LB 534, § 10.
 49-509. Session laws and journals; sale; price; proceeds; disposal.
 49-509.01. Session laws; journals; sale.
 49-510. Repealed. Laws 1986, LB 991, § 2.
 49-511. Repealed. Laws 1986, LB 991, § 2.

49-501 Session laws and journals; distribution by Secretary of State.

The Secretary of State is hereby authorized to distribute the laws and journals of the state.

Source: Laws 1907, c. 78, § 1, p. 289; R.S.1913, § 3733; Laws 1915, c. 72, § 1, p. 185; C.S.1922, § 3126; C.S.1929, § 49-501; R.S.1943, § 49-501; Laws 1977, LB 3, § 1.

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.

49-502 Session laws and journals; distribution by county clerk to judges, county officers, and county law library.

The county clerk shall distribute one copy of the session laws to the clerk of the district court for the use of the district court in all counties of the state except Lancaster and Douglas Counties, and in those counties one copy for each district judge in the county, to the judge of the county court, the county attorney, and to the county law library. He or she shall also reserve one copy each of the laws and journals for himself or herself and give one copy to each clerk magistrate in the county.

Source: Laws 1907, c. 78, § 3, p. 290; R.S.1913, § 3734; C.S.1922, § 3127; C.S.1929, § 49-502; R.S.1943, § 49-502; Laws 1957, c. 210, § 2, p. 743; Laws 1963, c. 303, § 2, p. 897; Laws 1972, LB 1032, § 253; Laws 1975, LB 59, § 1; Laws 1984, LB 13, § 81.

49-503 Requisition by county clerk.

The county clerk of each county shall make a requisition upon the Secretary of State for copies of the session laws and the journal of the Legislature for the use of the county of which he or she is clerk. The county clerk shall make the requisition for session laws based on the classification of the county by population as provided in section 23-1114.01. A Class 1 county may request a maximum of three sets, a Class 2 county may request a maximum of five sets, a Class 3 county may request a maximum of seven sets, a Class 4 county may request a maximum of ten sets, a Class 5 county may request a maximum of twelve sets, a Class 6 county may request a maximum of twenty sets, and a Class 7 county may request a maximum of twenty-five sets. The county clerk shall make a requisition for less than the maximum amount authorized if he or she finds that a lesser amount is sufficient for the needs of the county. The county clerk shall make a requisition for one copy of the journal of the Legislature. The Secretary of State shall forward the session laws and journal to each county by the most expeditious and economic means and 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.

Source: Laws 1907, c. 78, § 2, p. 289; R.S.1913, § 3735; C.S.1922, § 3128; C.S.1929, § 49-503; R.S.1943, § 49-503; Laws 1987, LB 572, § 1; Laws 2000, LB 534, § 2.

49-504 Copies in possession of county officers; delivery to successors.

Each county officer shall deliver to his successor in office all laws and journals which shall have come into his possession under the provisions of sections 49-502 and 49-503 as soon after his successor shall have qualified as such successor or the county clerk may require.

Source: Laws 1907, c. 78, § 4, p. 290; R.S.1913, § 3736; C.S.1922, § 3129; C.S.1929, § 49-504; R.S.1943, § 49-504.

49-505 Distribution to public libraries.

After the above distribution, the copies of laws and journals remaining in the hands of the county clerk may, upon their application, be distributed to the librarians of any public libraries within the county for whose support an annual tax is levied.

Source: Laws 1907, c. 78, § 5, p. 290; R.S.1913, § 3737; C.S.1922, § 3130; C.S.1929, § 49-505; R.S.1943, § 49-505.

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 materiel 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.

49-507 Distribution by State Librarian.

The State Librarian or his or her designee shall issue one copy each of the session laws and journals to the United States District Attorney, United States Marshal, the register and receiver of the United States land offices in the state, and each United States Commissioner residing in the state. The State Librarian shall determine whether the copies issued are in print or a reasonably available electronic format, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

Source: Laws 1907, c. 78, § 7, p. 291; R.S.1913, § 3739; C.S.1922, § 3132; C.S.1929, § 49-507; R.S.1943, § 49-507; Laws 1987, LB 572, § 3; Laws 2000, LB 534, § 4.

49-508 Distribution to new members of Legislature.

The new members of each Legislature shall be furnished by the State Librarian or his or her designee, at the commencement of the first session for which they are elected, with one copy of each of the session laws and journals of the preceding session, with a second copy furnished to any such member upon his or her request.

Source: Laws 1907, c. 78, § 8, p. 291; R.S.1913, § 3740; C.S.1922, § 3133; C.S.1929, § 49-508; R.S.1943, § 49-508; Laws 1975, LB 59, § 2; Laws 1980, LB 598, § 1; Laws 1987, LB 572, § 4; Laws 2010, LB770, § 2.

49-508.01 Repealed. Laws 2000, LB 534, § 10.

49-509 Session laws and journals; sale; price; proceeds; disposal.

Any remaining copies of the session laws and journals in the hands of the State Librarian shall be sold by the Supreme Court at a price of fifteen dollars for bound print copies of the session laws and forty dollars for bound print copies of the journal, except that after two years have elapsed from the date of publication, the court may sell any bound print copies of the session laws and journals at a price of twenty-five cents per volume. Any remaining copies of the session laws and journals in electronic format shall be sold by the Supreme Court at a price not to exceed the amount necessary to recover the cost of production, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

The proceeds shall be remitted to the General Fund. When there is no longer a demand for session laws and journals over two years old, the Supreme Court

may dispose of such session laws and journals in such manner as it deems proper.

Source: Laws 1907, c. 78, § 9, p. 291; R.S.1913, § 3741; Laws 1921, c. 213, § 5, p. 754; C.S.1922, § 3134; C.S.1929, § 49-509; R.S.1943, § 49-509; Laws 1945, c. 117, § 1, p. 390; Laws 1965, c. 307, § 1, p. 864; Laws 1971, LB 36, § 3; Laws 1973, LB 83, § 1; Laws 1987, LB 572, § 5; Laws 2000, LB 534, § 5.

49-509.01 Session laws; journals; sale.

The Clerk of the Legislature is hereby authorized and directed to sell unbound print copies of the session laws and unbound print copies of the daily journal of each legislative session at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall not exceed the amount necessary to recover costs. For the unbound print journal and laws of a special session, when published separately from that of a regular session, the price shall be as recommended by the Clerk of the Legislature and approved by the Executive Board of the Legislative Council.

Source: Laws 1971, LB 36, § 2; Laws 1979, LB 7, § 1; Laws 2000, LB 534, § 6.

49-510 Repealed. Laws 1986, LB 991, § 2.

49-511 Repealed. Laws 1986, LB 991, § 2.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section

- 49-601. Repealed. Laws 1986, LB 994, § 2.
- 49-602. Repealed. Laws 1986, LB 994, § 2.
- 49-603. Repealed. Laws 1986, LB 994, § 2.
- 49-604. Repealed. Laws 1986, LB 994, § 2.
- 49-605. Repealed. Laws 1986, LB 994, § 2.
- 49-606. Repealed. Laws 1986, LB 994, § 2.
- 49-607. Repealed. Laws 1986, LB 994, § 2.
- 49-608. Repealed. Laws 1986, LB 994, § 2.
- 49-609. Repealed. Laws 1986, LB 994, § 2.
- 49-610. Repealed. Laws 1986, LB 994, § 2.
- 49-611. Repealed. Laws 1986, LB 994, § 2.
- 49-612. Repealed. Laws 1986, LB 994, § 2.
- 49-613. Repealed. Laws 1986, LB 994, § 2.
- 49-614. Repealed. Laws 1986, LB 994, § 2.
- 49-615. Repealed. Laws 1986, LB 994, § 2.
- 49-616. Repealed. Laws 1986, LB 994, § 2.
- 49-617. Printing of statutes; distribution of copies.
- 49-618. Repealed. Laws 1961, c. 284, § 1.

49-601 Repealed. Laws 1986, LB 994, § 2.

49-602 Repealed. Laws 1986, LB 994, § 2.

49-603 Repealed. Laws 1986, LB 994, § 2.

49-604 Repealed. Laws 1986, LB 994, § 2.

49-605 Repealed. Laws 1986, LB 994, § 2.

49-606 Repealed. Laws 1986, LB 994, § 2.

49-607 Repealed. Laws 1986, LB 994, § 2.

49-608 Repealed. Laws 1986, LB 994, § 2.

49-609 Repealed. Laws 1986, LB 994, § 2.

49-610 Repealed. Laws 1986, LB 994, § 2.

49-611 Repealed. Laws 1986, LB 994, § 2.

49-612 Repealed. Laws 1986, LB 994, § 2.

49-613 Repealed. Laws 1986, LB 994, § 2.

49-614 Repealed. Laws 1986, LB 994, § 2.

49-615 Repealed. Laws 1986, LB 994, § 2.

49-616 Repealed. Laws 1986, LB 994, § 2.

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.

49-618 Repealed. Laws 1961, c. 284, § 1.

ARTICLE 7 STATUTE REVISION

Cross References

Constitutional provisions:

Reissue 2021

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STATUTE REVISION

Certification to Legislature by Supreme Court of desirable amendments or changes in laws, see Article IV, section 23, and Article V, section 25, Constitution of Nebraska.

Section	
49-701.	Revisor of Statutes; office created.
49-702.	Revisor of Statutes; duties.
49-702.01.	Repealed. Laws 1977, LB 8, § 6.
49-703.	Transferred to section 24-211.03.
49-703.01.	Repealed. Laws 1961, c. 284, § 1.
49-703.02.	Repealed. Laws 1955, c. 78, § 6.
49-704.	Revisor of Statutes; printing contracts; approval; number of volumes.
49-705.	Revisor of Statutes; supplements and reissued or replacement volumes; powers; clauses to be omitted; changes to be made, how shown.
49-705.01.	Repealed. Laws 1977, LB 8, § 6.
49-706.	Repealed. Laws 1977, LB 8, § 6.
49-707.	Copyright; distribution; price; disposition of proceeds; receipts.
49-708.	Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.
49-709.	Repealed. Laws 1961, c. 284, § 1.
49-710.	Repealed. Laws 1961, c. 284, § 1.
49-711.	Repealed. Laws 1961, c. 284, § 1.
49-712.	Repealed. Laws 1961, c. 284, § 1.
49-713.	Repealed. Laws 1961, c. 284, § 1.
49-714.	Repealed. Laws 1961, c. 284, § 1.
49-715.	Repealed. Laws 1961, c. 284, § 1.
49-716.	Repealed. Laws 1961, c. 284, § 1.
49-717.	Repealed. Laws 1961, c. 284, § 1.
49-718.	Repealed. Laws 1961, c. 284, § 1.
49-719.	Repealed. Laws 1961, c. 284, § 1.
49-720.	Repealed. Laws 1961, c. 284, § 1.
49-721.	Repealed. Laws 1977, LB 8, § 6.
49-722.	Repealed. Laws 1977, LB 8, § 6.
49-723.	Repealed. Laws 1977, LB 8, § 6.
49-724.	Repealed. Laws 1977, LB 8, § 6.
49-725.	Repealed. Laws 1977, LB 8, § 6.
49-726.	Repealed. Laws 1977, LB 8, § 6.
49-727.	Repealed. Laws 1977, LB 8, § 6.
49-728.	Repealed. Laws 1977, LB 8, § 6.
49-729.	Repealed. Laws 1977, LB 8, § 6.
49-730.	Repealed. Laws 1977, LB 8, § 6.
49-731.	Repealed. Laws 1977, LB 8, § 6.
49-732.	Repealed. Laws 1977, LB 8, § 6.
49-733.	Repealed. Laws 1977, LB 8, § 6.
49-734.	Repealed. Laws 1977, LB 8, § 6.
49-735.	Repealed. Laws 1977, LB 8, § 6.
49-736.	Repealed. Laws 1977, LB 8, § 6.
49-737.	Repealed. Laws 1977, LB 8, § 6.
49-738.	Repealed. Laws 1977, LB 8, § 6.
49-739.	Repealed. Laws 1977, LB 8, § 6.
49-740.	Repealed. Laws 1977, LB 8, § 6.
49-741.	Repealed. Laws 1977, LB 8, § 6.
49-742.	Repealed. Laws 1977, LB 8, § 6.
49-743.	Repealed. Laws 1977, LB 8, § 6.
49-744.	Repealed. Laws 1977, LB 8, § 6.
49-745.	Repealed. Laws 1977, LB 8, § 6.
49-746.	Repealed. Laws 1977, LB 8, § 6.
49-747.	Repealed. Laws 1977, LB 8, § 6.
49-748.	Repealed. Laws 1977, LB 8, § 6.
49-749.	Repealed. Laws 1977, LB 8, § 6.
49-750.	Repealed. Laws 1977, LB 8, § 6.
49-751.	Repealed. Laws 1977, LB 8, § 6.
49-752.	Repealed. Laws 1977, LB 8, § 6.

Section

- 49-753. Repealed. Laws 1977, LB 8, § 6.
- 49-754. Repealed. Laws 1977, LB 8, § 6.
- 49-755. Repealed. Laws 1977, LB 8, § 6.
- 49-756. Repealed. Laws 1977, LB 8, § 6.
- 49-757. Repealed. Laws 1977, LB 8, § 6.
- 49-758. Repealed. Laws 1977, LB 8, § 6.
- 49-759. Repealed. Laws 1977, LB 8, § 6.
- 49-760. Repealed. Laws 1977, LB 8, § 6.
- 49-761. Repealed. Laws 1977, LB 8, § 6.
- 49-762. Repealed. Laws 1977, LB 8, § 6.
- 49-763. Repealed. Laws 1977, LB 8, § 6.
- 49-764. Repealed. Laws 1977, LB 8, § 6.
- 49-765. Revisor of Statutes; reissuance of volumes; duties.
- 49-766. Repealed. Laws 1977, LB 8, § 6.
- 49-767. Supplements and reissued volumes; certification; deposit of official copy; official version of statutes; use in courts.
- 49-768. Repealed. Laws 1977, LB 8, § 6.
- 49-769. Section of statutes; not correlated; reconcilable; Revisor of Statutes; duties.
- 49-770. Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.
- 49-771. Revisor of Statutes; obsolete sections; compilation; duties.

49-701 Revisor of Statutes; office created.

There is hereby created within the Legislative Council the office of Revisor of Statutes.

Source: Laws 1945, c. 119, § 1, p. 392; Laws 1967, c. 328, § 2, p. 869.

Legislature created the office of Revisor of Statutes to implement constitutional provision with respect to report of Judges of Supreme Court to Legislature of defects in Constitution and laws. *Haffke v. State*, 149 Neb. 83, 30 N.W.2d 462 (1948).

49-702 Revisor of Statutes; duties.

It shall be the duty of the Revisor of Statutes:

(1) To consult with and assist the Legislative Council prior to each regular session of the Legislature in the preparation of the report of the Legislative Council as to defects in the Constitution of Nebraska and laws of Nebraska and to draft in the form of bills proposed legislation to carry out the recommendations contained in the report;

(2) To prepare for submission to the Legislature, from time to time, when recommended by the Legislative Council in its report as to defects in the Constitution of Nebraska and laws of Nebraska, a rewriting and revision, chapter by chapter, in simplified style and phraseology, of the various chapters of the statutes of Nebraska;

(3) To publish annotations of the decisions of the Supreme Court of Nebraska, the Court of Appeals, and the federal courts as received from the Reporter of the Supreme Court and Court of Appeals; and

(4) To prepare, arrange, and correlate for publication, at the end of each legislative session, the laws enacted during the session and to arrange and correlate for publication replacements of the permanent volumes of the statutes.

Source: Laws 1945, c. 119, § 2, p. 392; Laws 1967, c. 328, § 3, p. 869; Laws 1969, c. 412, § 2, p. 1418; Laws 1986, LB 994, § 1; Laws 1994, LB 1244, § 2; Laws 1995, LB 271, § 8.

The duties under subsection (4) of this section are continuing duties imposed upon the Revisor of Statutes each day during which the revisor occupies that office. *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 380 N.W.2d 259 (1986).

Changes made by the Revisor of Statutes in preparing supplements and reissued or replacement volumes of revised statutes cannot change substantive meaning of any statute as enacted by

the Legislature. *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

It is the duty of the Revisor of Statutes to prepare report of Judges of Supreme Court to Legislature and to draft legislation to carry out recommendations. *Haffke v. State*, 149 Neb. 83, 30 N.W.2d 462 (1948).

49-702.01 Repealed. Laws 1977, LB 8, § 6.

49-703 Transferred to section 24-211.03.

49-703.01 Repealed. Laws 1961, c. 284, § 1.

49-703.02 Repealed. Laws 1955, c. 78, § 6.

49-704 Revisor of Statutes; printing contracts; approval; number of volumes.

(1) The Revisor of Statutes may, subject to the approval of the Executive Board of the Legislative Council, negotiate and enter into a contract without advertising for bids for the editing, printing, binding, and publication, under his supervision and direction, of the supplements and reissued or replacement volumes to the statutes of Nebraska.

(2) The Revisor of Statutes shall cause a sufficient number of copies of such volumes to be printed under contract according to specifications to be formulated by the Revisor of Statutes.

Source: Laws 1945, c. 119, § 4, p. 393; Laws 1967, c. 328, § 5, p. 870; Laws 1971, LB 34, § 1; Laws 1977, LB 8, § 1.

49-705 Revisor of Statutes; supplements and reissued or replacement volumes; powers; clauses to be omitted; changes to be made, how shown.

(1) The Revisor of Statutes, in preparing supplements and reissued or replacement volumes for publication and distribution, shall not alter the sense, meaning or effect of any act of the Legislature, but may (a) renumber sections and parts of sections, (b) rearrange sections, (c) change reference numbers to agree with renumbered chapters, articles, or sections, (d) substitute the proper section, article, or chapter numbers for the terms the preceding section, this article, this act, and like terms, (e) strike out figures where they are merely a repetition of written words, (f) change capitalization for the purpose of uniformity, and (g) correct manifest clerical or typographical errors. The Revisor of Statutes shall omit all titles to acts, all enacting and repealing clauses, all declarations of emergency, and all validity and construction clauses, including sections stating the effective date of salary changes, unless, from their nature, it may be necessary to retain some of them to preserve the full meaning and intent of the law.

(2) In addition to the authority provided in subsection (1) of this section, the Revisor of Statutes, in preparing supplements and reissued or replacement volumes for publication and distribution, may (a) remove obsolete matter within any section, (b) omit obsolete sections stating the effective date of salary changes, (c) remove from within any section language which the Supreme Court has held to be unconstitutional without impairing the constitutionality of the remainder of the section, (d) omit any section or sections, or any complete act, which the Supreme Court has held to be unconstitutional, (e) reinstate a section as it existed immediately prior to an amendment which the Supreme Court has held unconstitutional, (f) correct faulty internal references, and (g)

harmonize provisions with former acts of the Legislature. Changes made under the provisions of this subsection shall be effective only upon publication in the supplement or replacement volume, which publication shall contain a brief note explaining the change made and citing this subsection as the authority therefor. No change made under the provisions of this subsection shall effect any change in the substantive meaning of any section. If the Revisor of Statutes is in doubt whether or not a specific change is authorized by this subsection, he shall not make the change but shall propose it as a legislative bill at the next regular session of the Legislature.

Source: Laws 1945, c. 119, § 5, p. 393; Laws 1972, LB 1487, § 1; Laws 1977, LB 8, § 2.

The Revisor of Statutes is obligated by law to print and publish laws as enacted by the Legislature and to not exercise discretion in excising a portion of these laws. The Revisor cannot make corrections or modifications which change the substantive meaning of a statute as enacted by the Legislature. *State v. Urbano*, 256 Neb. 194, 589 N.W.2d 144 (1999).

The fact that the language of a later-enacted statute is nearly identical to the language of an earlier-enacted statute which the Supreme Court has declared unconstitutional does not render the more recent statute unconstitutional unless and until it is

declared so by the Supreme Court, and, unless and until a law is declared unconstitutional by the Supreme Court, the authority granted to the Revisor of Statutes in subsection (2) of this section does not become operative. *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 380 N.W.2d 259 (1986).

Changes made by the Revisor of Statutes in preparing supplements and reissued or replacement volumes of revised statutes cannot change substantive meaning of any statute as enacted by the Legislature. *State v. Karel*, 204 Neb. 573, 284 N.W.2d 12 (1979).

49-705.01 Repealed. Laws 1977, LB 8, § 6.

49-706 Repealed. Laws 1977, LB 8, § 6.

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.

49-709 Repealed. Laws 1961, c. 284, § 1.

49-710 Repealed. Laws 1961, c. 284, § 1.

49-711 Repealed. Laws 1961, c. 284, § 1.

49-712 Repealed. Laws 1961, c. 284, § 1.

49-713 Repealed. Laws 1961, c. 284, § 1.

49-714 Repealed. Laws 1961, c. 284, § 1.

49-715 Repealed. Laws 1961, c. 284, § 1.

49-716 Repealed. Laws 1961, c. 284, § 1.

49-717 Repealed. Laws 1961, c. 284, § 1.

49-718 Repealed. Laws 1961, c. 284, § 1.

49-719 Repealed. Laws 1961, c. 284, § 1.

49-720 Repealed. Laws 1961, c. 284, § 1.

49-721 Repealed. Laws 1977, LB 8, § 6.

49-722 Repealed. Laws 1977, LB 8, § 6.

49-723 Repealed. Laws 1977, LB 8, § 6.

49-724 Repealed. Laws 1977, LB 8, § 6.

49-725 Repealed. Laws 1977, LB 8, § 6.

49-726 Repealed. Laws 1977, LB 8, § 6.

- 49-727 Repealed. Laws 1977, LB 8, § 6.
- 49-728 Repealed. Laws 1977, LB 8, § 6.
- 49-729 Repealed. Laws 1977, LB 8, § 6.
- 49-730 Repealed. Laws 1977, LB 8, § 6.
- 49-731 Repealed. Laws 1977, LB 8, § 6.
- 49-732 Repealed. Laws 1977, LB 8, § 6.
- 49-733 Repealed. Laws 1977, LB 8, § 6.
- 49-734 Repealed. Laws 1977, LB 8, § 6.
- 49-735 Repealed. Laws 1977, LB 8, § 6.
- 49-736 Repealed. Laws 1977, LB 8, § 6.
- 49-737 Repealed. Laws 1977, LB 8, § 6.
- 49-738 Repealed. Laws 1977, LB 8, § 6.
- 49-739 Repealed. Laws 1977, LB 8, § 6.
- 49-740 Repealed. Laws 1977, LB 8, § 6.
- 49-741 Repealed. Laws 1977, LB 8, § 6.
- 49-742 Repealed. Laws 1977, LB 8, § 6.
- 49-743 Repealed. Laws 1977, LB 8, § 6.
- 49-744 Repealed. Laws 1977, LB 8, § 6.
- 49-745 Repealed. Laws 1977, LB 8, § 6.
- 49-746 Repealed. Laws 1977, LB 8, § 6.
- 49-747 Repealed. Laws 1977, LB 8, § 6.
- 49-748 Repealed. Laws 1977, LB 8, § 6.
- 49-749 Repealed. Laws 1977, LB 8, § 6.
- 49-750 Repealed. Laws 1977, LB 8, § 6.
- 49-751 Repealed. Laws 1977, LB 8, § 6.
- 49-752 Repealed. Laws 1977, LB 8, § 6.
- 49-753 Repealed. Laws 1977, LB 8, § 6.
- 49-754 Repealed. Laws 1977, LB 8, § 6.
- 49-755 Repealed. Laws 1977, LB 8, § 6.
- 49-756 Repealed. Laws 1977, LB 8, § 6.
- 49-757 Repealed. Laws 1977, LB 8, § 6.

49-758 Repealed. Laws 1977, LB 8, § 6.

49-759 Repealed. Laws 1977, LB 8, § 6.

49-760 Repealed. Laws 1977, LB 8, § 6.

49-761 Repealed. Laws 1977, LB 8, § 6.

49-762 Repealed. Laws 1977, LB 8, § 6.

49-763 Repealed. Laws 1977, LB 8, § 6.

49-764 Repealed. Laws 1977, LB 8, § 6.

49-765 Revisor of Statutes; reissuance of volumes; duties.

The Revisor of Statutes, when reissuing and bringing up to date the Reissue Revised Statutes of Nebraska, shall incorporate in the reissued volumes all laws enacted by the Legislature since the volumes to be reissued were brought up to date. He or she shall make such corrections of clerical and typographical errors as may have been discovered since the last publications thereof. He or she shall also include therein annotations to all decisions of the Supreme Court, the Court of Appeals, and the federal courts construing the sections therein that have been rendered since the last publication thereof. The reissued volumes shall be made up, printed, and bound to correspond, as nearly as practicable, with the present reissued volumes of the Reissue Revised Statutes of Nebraska.

Source: Laws 1973, LB 1, § 1; Laws 1977, LB 8, § 4; Laws 1994, LB 1244, § 3; Laws 1995, LB 589, § 10.

49-766 Repealed. Laws 1977, LB 8, § 6.

49-767 Supplements and reissued volumes; certification; deposit of official copy; official version of statutes; use in courts.

The Revisor of Statutes shall certify that the contents of the supplements and reissued volumes, as published, are true copies of all laws of a general nature that are in force at the time of the publication thereof. The Revisor of Statutes shall deposit a copy of the supplements and reissued volumes so certified in the office of the Secretary of State. The supplements and reissued volumes shall constitute the official version of the statutes of Nebraska and may be cited as prima facie evidence of the law in all of the courts of this state.

Source: Laws 1973, LB 1, § 3; Laws 1977, LB 8, § 5; Laws 1994, LB 1244, § 4.

49-768 Repealed. Laws 1977, LB 8, § 6.

49-769 Section of statutes; not correlated; 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 entirely reconcilable and not in conflict with each other, it shall be the duty of the Revisor of Statutes to correlate them so as to reflect all such amendments and to cause the result to

be published in the statutory supplement followed by a brief note explaining the action taken.

Source: Laws 1979, LB 70, § 1.

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.

49-771 Revisor of Statutes; obsolete sections; compilation; duties.

The Revisor of Statutes shall establish an ongoing and comprehensive system to provide a continuing compilation of sections of the Nebraska statutes which the revisor believes to be obsolete or no longer needed. Preceding each legislative session, the Revisor of Statutes shall provide the chairperson of the Executive Board of the Legislative Council with a list of such sections. The Executive Board may request that legislation be drafted to amend or repeal the obsolete sections and such legislation when introduced shall be treated as a Revisor of Statute's correctional bill.

Source: Laws 1980, LB 598, § 4.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Cross References

Crimes, statutes relating to, how construed, see sections 29-105 to 29-109.

Section

49-801.	Statutes; terms, defined.
49-801.01.	Internal Revenue Code; reference.
49-802.	Statutes; general rules of construction.
49-803.	Repealed. Laws 1995, LB 589, § 16.
49-804.	Appropriations; validity; requirements.
49-805.	Appropriations; failure to meet criteria; effect.
49-805.01.	Appropriations from state treasury; specific sums.
49-806.	Statutes; list of section numbers; rules of construction.
49-807.	Power of attorney; powers relating to rights of survivorship and beneficiary designations.

49-801 Statutes; terms, defined.

Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person shall include the purchase, grant, gift, devise, bequest, and obtaining by eminent domain;

- (2) Action shall include any proceeding in any court of this state;
- (3) Attorney shall mean attorney at law;
- (4) Company shall include any corporation, partnership, limited liability company, joint-stock company, joint venture, or association;
- (5) Domestic when applied to corporations shall mean all those created by authority of this state;
- (6) Federal shall refer to the United States;
- (7) Foreign when applied to corporations shall include all those created by authority other than that of this state;
- (8) Grantee shall include every person to whom any estate or interest passes in or by any conveyance;
- (9) Grantor shall include every person from or by whom any estate or interest passes in or by any conveyance;
- (10) Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used;
- (11) Land or real estate shall include lands, tenements, and hereditaments and all rights thereto and interest therein other than a chattel interest;
- (12) Magistrate shall include judge of the county court and clerk magistrate;
- (13) Month shall mean calendar month;
- (14) Oath shall include affirmation in all cases in which an affirmation may be substituted for an oath;
- (15) Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;
- (16) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;
- (17) Personal estate shall include money, goods, chattels, claims, and evidences of debt;
- (18) Process shall mean a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings;
- (19) Service animal shall have the same meaning as in 28 C.F.R. 36.104, as such regulation existed on January 1, 2008;
- (20) State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress;
- (21) Sworn shall include affirmed in all cases in which an affirmation may be substituted for an oath;
- (22) The United States shall include territories, outlying possessions, and the District of Columbia;
- (23) Violate shall include failure to comply with;
- (24) Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

(25) Year shall mean calendar year.

Source: Laws 1947, c. 182, § 1, p. 601; Laws 1967, c. 175, § 2, p. 490; Laws 1972, LB 1032, § 255; Laws 1975, LB 481, § 30; Laws 1984, LB 13, § 83; Laws 1988, LB 1030, § 43; Laws 1993, LB 121, § 303; Laws 2008, LB806, § 12.

In conjunction with section 25-2221 and subsection (13) of this section, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

Unless the context is shown to intend otherwise, action includes any proceeding in a court and only final orders therein

are bases for appeals. *Grantham v. General Telephone Co.*, 187 Neb. 647, 193 N.W.2d 449 (1972).

Term person in statutes includes a corporation. *Fosler v. Aden*, 175 Neb. 535, 122 N.W.2d 494 (1963).

The word month is legislatively defined as calendar month. *Ruan Transport Corp. v. Peake Inc.*, 163 Neb. 319, 79 N.W.2d 575 (1956).

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, 77-6842, 77-6908, 77-6913, 77-6915, 77-6916, and 77-6925, 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; Laws 2021, LB544, § 29. Operative date January 1, 2022.

49-802 Statutes; general rules of construction.

Unless such construction would be inconsistent with the manifest intent of the Legislature, rules for construction of the statutes of Nebraska hereafter enacted shall be as follows:

(1) When the word may appears, permissive or discretionary action is presumed. When the word shall appears, mandatory or ministerial action is presumed.

(2) The present tense of any verb includes the future, when applicable.

(3) The phrase shall have been includes past and future cases.

(4) Gender when referring to masculine also includes feminine and neuter.

(5) Words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in

the law shall be construed and understood according to such peculiar and appropriate meaning.

(6) Singular words may extend and be applied to several persons or things as well as to one person or thing.

(7) Plural words may extend and be applied to one person or thing as well as to several persons or things.

(8) Title heads, chapter heads, section and subsection heads or titles, and explanatory notes and cross references, in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law.

(9) Whenever, in the statute laws of this state, a reference is made to two or more sections and the section numbers given in the reference are connected by the word to, the reference includes both the sections whose numbers are given and all intervening sections.

(10) No law repealed by subsequent act of the Legislature is revived or affected by the repeal of such repealing act.

(11) The repeal of a curative or validating law does not impair or affect any cure or validation previously perfected thereunder.

The enumeration of the rules of construction set out in this section is not intended to be exclusive, but is intended to set forth the common situations which arise in the preparation of legislative bills where a general statement by the Legislature of its purpose may aid and assist in ascertaining the legislative intent.

Source: Laws 1947, c. 182, § 2, p. 603.

- 1. Singular or plural construction
- 2. Mandatory or discretionary action
- 3. Miscellaneous

1. Singular or plural construction

Words county superintendent included the plural county superintendents. Moser v. Turner, 180 Neb. 635, 144 N.W.2d 192 (1966).

Designation in statute of term polling places conferred authority to designate one polling place. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

Word municipality in airport act included more than one. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

2. Mandatory or discretionary action

On appeal from a county or municipal court, notice of appeal and bond must be filed within ten days after rendition of judgment and this period cannot be prolonged by filing a motion for new trial. Edward Frank Rozman Co. v. Keillor, 195 Neb. 587, 239 N.W.2d 779 (1976).

The word "shall" in section 9-504(3), U.C.C., makes notice a mandatory obligation. Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974).

Use of word may in Sexual Psychopath Act disclosed legislative intent that discretion was vested in district court. State v. Noll, 171 Neb. 831, 108 N.W.2d 108 (1961).

Use of the word shall disclosed legislative intent that mandatory action was intended. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

3. Miscellaneous

The heading, or catchline, is supplied in the compilation of the statutes and does not constitute any part of the law. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).

The Chapter heading "Highways, Bridges and Ferries" does not limit the guest statute so as to make it inapplicable to a vehicle on private property. Hale v. Taylor, 192 Neb. 298, 220 N.W.2d 378 (1974).

Unless such construction would be inconsistent with the manifest intent of the Legislature, heads supplied in compilation of sections enacted after passage of this section do not constitute any part of the law enacted. Cosentino v. City of Omaha, 186 Neb. 407, 183 N.W.2d 475 (1971).

This section constitutes legislative sanction of a sound rule of statutory construction. Yeoman v. Houston, 168 Neb. 855, 97 N.W.2d 634 (1959).

49-803 Repealed. Laws 1995, LB 589, § 16.

49-804 Appropriations; validity; requirements.

An appropriation shall only exist when the following criteria have been met:

- (1) There shall be included the phrase there is hereby appropriated;
- (2) A specific fund type shall be identified and the fund shall be appropriated;

- (3) The amount to be appropriated from such fund shall be identified;
- (4) A specific budget program or a specific statement reflecting the purpose for expending such funds shall be identified; and
- (5) The time period during which such funds shall be expended shall be identified.

Source: Laws 1979, LB 232, § 1.

49-805 Appropriations; failure to meet criteria; effect.

Any legislation not meeting the criteria established in section 49-804 shall not be considered a valid appropriation as defined in Article III, section 22, of the Nebraska Constitution.

Source: Laws 1979, LB 232, § 2.

49-805.01 Appropriations from state treasury; specific sums.

All appropriations of money from the state treasury, whether such money is derived from the levy of state taxes or from any other source, shall be by the appropriation of specific sums.

Source: Laws 1921, c. 24, § 1, p. 150; C.S.1922, § 6228; C.S.1929, § 77-2617; R.S.1943, § 77-2417; Laws 1979, LB 194, § 1; R.S. 1943, (1986), § 77-2417; Laws 1989, LB 13, § 2.

49-806 Statutes; list of section numbers; rules of construction.

Unless the Legislature specifies otherwise or the legislative intent is clearly to the contrary, in construing statutes in effect prior to, on, or after July 10, 1984:

(1) If a list of statutes in a section in the form of two section numbers joined by the word to is amended to include a newly enacted statute which is assigned a section number which falls within the range of the specified list, the Revisor of Statutes shall not be required to print the statute showing both the original list and the section number of the newly enacted statute and the list shall be construed to encompass the new statute as of the date the newly enacted statute takes effect or becomes operative, whichever is later;

(2) If a list of statutes in a section is in the form of two section numbers joined by the word to and a statute, the section number of which falls within the range of the list, is repealed, the list shall be construed to exclude the repealed statute as of the date its repeal takes effect or becomes operative, whichever is later; and

(3) If a list of statutes by section numbers is defined to be a named act and the list is later amended to include an additional section or to exclude a repealed section, either by a direct change or by operation of subdivision (2) of this section, any reference to the act by name shall be construed to encompass the added or exclude the repealed section as of the date its enactment or repeal takes effect or becomes operative, whichever is later.

Source: Laws 1984, LB 633, § 1.

49-807 Power of attorney; powers relating to rights of survivorship and beneficiary designations.

An agent or attorney in fact under a power of attorney, whether the power of attorney is durable or nondurable, may do the following on behalf of the

principal or with the principal's property only if the power of attorney expressly grants the agent or attorney in fact the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (1) Create or change rights of survivorship; or
- (2) Create or change a beneficiary designation.

Source: Laws 2010, LB712, § 43.

ARTICLE 9

COMMISSION ON UNIFORM STATE LAWS

Section

- 49-901. Commission on Uniform State Laws; creation; members; terms.
- 49-901.01. Revisor of Statutes; membership.
- 49-902. Members; vacancy in office; filled by Governor.
- 49-903. Members; meetings; officers, terms of office.
- 49-904. Members; duties.
- 49-905. Members; expenses; support of conference; appropriation by Legislature.

49-901 Commission on Uniform State Laws; creation; members; terms.

A commission is hereby established to be known as the Commission on Uniform State Laws which shall consist of three recognized members of the bar who shall be appointed by the Governor for terms of four years each, and until their successors are appointed, and in addition thereto any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

Source: Laws 1951, c. 166, § 1, p. 649.

49-901.01 Revisor of Statutes; membership.

Until July 15, 1998, the Revisor of Statutes shall continue to serve as an associate member of the National Conference of Commissioners on Uniform State Laws. On and after July 15, 1998, the Revisor of Statutes shall serve as a commissioner.

Source: Laws 1998, LB 1158, § 3.

49-902 Members; vacancy in office; filled by Governor.

Upon the death, resignation, failure, or refusal to serve of any appointed commissioner, his office shall become vacant; and the Governor shall make an appointment to fill the vacancy, such appointment to be for the unexpired term of the former appointee.

Source: Laws 1951, c. 166, § 2, p. 649.

49-903 Members; meetings; officers, terms of office.

The commissioners shall meet at least once in two years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of two years and until their successors are elected.

Source: Laws 1951, c. 166, § 3, p. 650.

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.

49-905 Members; expenses; support of conference; appropriation by Legislature.

There may be appropriated a sum sufficient to reimburse members of the Commission on Uniform State Laws for their necessary expenses in performing the duties of their offices as provided in sections 81-1174 to 81-1177, to defray the cost of printing the commission's reports, and to make a contribution for the purposes set forth in section 49-904 on behalf of this state to the National Conference of Commissioners on Uniform State Laws.

Source: Laws 1951, c. 166, § 5, p. 650; Laws 1957, c. 212, § 1, p. 747; Laws 1961, c. 245, § 1, p. 730; Laws 1981, LB 204, § 87; Laws 1998, LB 1158, § 2.

ARTICLE 10**STANDARD TIME**

Section

- 49-1001. Repealed. Laws 1967, c. 327, § 1.
49-1002. Repealed. Laws 1967, c. 327, § 1.

49-1001 Repealed. Laws 1967, c. 327, § 1.

49-1002 Repealed. Laws 1967, c. 327, § 1.

ARTICLE 11**CONFLICT OF INTEREST**

Section

- 49-1101. Repealed. Laws 1976, LB 987, § 141.
49-1102. Repealed. Laws 1976, LB 987, § 141.
49-1103. Repealed. Laws 1976, LB 987, § 141.
49-1104. Repealed. Laws 1976, LB 987, § 141.
49-1105. Repealed. Laws 1976, LB 987, § 141.
49-1106. Repealed. Laws 1976, LB 987, § 141.
49-1107. Repealed. Laws 1976, LB 987, § 141.
49-1108. Repealed. Laws 1976, LB 987, § 141.
49-1109. Repealed. Laws 1976, LB 987, § 141.
49-1110. Repealed. Laws 1976, LB 987, § 141.
49-1111. Repealed. Laws 1976, LB 987, § 141.

Section

- 49-1112. Repealed. Laws 1976, LB 987, § 141.
 49-1113. Repealed. Laws 1976, LB 987, § 141.
 49-1114. Repealed. Laws 1976, LB 987, § 141.
 49-1115. Repealed. Laws 1976, LB 987, § 141.
 49-1116. Repealed. Laws 1976, LB 987, § 141.
 49-1117. Repealed. Laws 1976, LB 987, § 141.

49-1101 Repealed. Laws 1976, LB 987, § 141.

49-1102 Repealed. Laws 1976, LB 987, § 141.

49-1103 Repealed. Laws 1976, LB 987, § 141.

49-1104 Repealed. Laws 1976, LB 987, § 141.

49-1105 Repealed. Laws 1976, LB 987, § 141.

49-1106 Repealed. Laws 1976, LB 987, § 141.

49-1107 Repealed. Laws 1976, LB 987, § 141.

49-1108 Repealed. Laws 1976, LB 987, § 141.

49-1109 Repealed. Laws 1976, LB 987, § 141.

49-1110 Repealed. Laws 1976, LB 987, § 141.

49-1111 Repealed. Laws 1976, LB 987, § 141.

49-1112 Repealed. Laws 1976, LB 987, § 141.

49-1113 Repealed. Laws 1976, LB 987, § 141.

49-1114 Repealed. Laws 1976, LB 987, § 141.

49-1115 Repealed. Laws 1976, LB 987, § 141.

49-1116 Repealed. Laws 1976, LB 987, § 141.

49-1117 Repealed. Laws 1976, LB 987, § 141.

ARTICLE 12

MAIL

Section

- 49-1201. Presumption of mailing.
 49-1202. Registered, certified mail; record authenticated; evidence of mailing.
 49-1203. Saturday, Sunday, nonjudicial day, legal holiday; next business day; performance; effect.

49-1201 Presumption of mailing.

Any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment required or authorized to be filed or made to the State of Nebraska, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed

filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying.

Source: Laws 1971, LB 867, § 1; Laws 2001, LB 170, § 1.

This section relates to tax matters and is inapplicable in postconviction actions. State v. Smith, 286 Neb. 77, 834 N.W.2d 799 (2013).

49-1202 Registered, certified mail; record authenticated; evidence of mailing.

If any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment, referred to in section 49-1201, is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

Source: Laws 1971, LB 867, § 2; Laws 2002, LB 994, § 5.

49-1203 Saturday, Sunday, nonjudicial day, legal holiday; next business day; performance; effect.

If the date for filing any report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or for making any payment, referred to in section 49-1201, falls upon a Saturday, Sunday, nonjudicial day, or legal holiday, such filing or payment shall be considered timely if performed in person or postmarked on the next business day.

Source: Laws 1971, LB 867, § 3; Laws 1989, LB 66, § 1; Laws 2002, LB 994, § 6; Laws 2003, LB 760, § 17.

**ARTICLE 13
TIME ZONES**

Section
49-1301. Standard time for Nebraska.
49-1302. Daylight time; when.
49-1303. Repealed. Laws 1987, LB 774, § 3.

49-1301 Standard time for Nebraska.

The standard time of the State of Nebraska shall be the time established by the Uniform Time Act of 1966 in both the Central and Rocky Mountain time zones.

Source: Laws 1974, LB 651, § 1; Laws 1987, LB 774, § 1.

49-1302 Daylight time; when.

Daylight time for the State of Nebraska shall be in effect from the first Sunday in April until the last Sunday in October of each year at such clock time as is prescribed in the Uniform Time Act of 1966.

Source: Laws 1974, LB 651, § 2; Laws 1987, LB 774, § 2.

49-1303 Repealed. Laws 1987, LB 774, § 3.**ARTICLE 14****NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT**

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(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.

The constitutionality of the Nebraska Political Accountability and Disclosure Act is generally irrelevant to a disciplinary proceeding. Ordinarily, a respondent has no standing to challenge the act. *State ex rel. NSBA v. Douglas*, 227 Neb. 1, 416 N.W.2d 515 (1987).

49-1402 Legislative findings.

The Legislature finds:

(1) That the public interest in the manner in which election campaigns are conducted has increased greatly in recent years, creating a need for additional disclosure and accountability;

(2) That there is a compelling state interest in ensuring that the state and local elections are free of corruption and the appearance of corruption and that

this can only be achieved if (a) the sources of funding of campaigns are fully disclosed and (b) the use of money in campaigns is fully disclosed;

(3) That it is essential to the proper operation of democratic government that public officials and employees be independent and impartial, that governmental decisions and policy be made in the proper channels of governmental structure, and that public office or employment not be used for private gain other than the compensation provided by law; and

(4) That the attainment of one or more of these ends is impaired when there exists, or appears to exist, a substantial conflict between the private interests of a public official and his or her duties as such official; and that although the vast majority of public officials and employees are dedicated and serve with high integrity, the public interest requires that the law provide greater accountability, disclosure, and guidance with respect to the conduct of public officials and employees.

Source: Laws 1976, LB 987, § 2; Laws 1997, LB 49, § 2.

49-1403 Definitions, where found.

For purposes of the Nebraska Political Accountability and Disclosure Act, unless the context otherwise requires, the definitions found in sections 49-1404 to 49-1444 shall be used.

Source: Laws 1976, LB 987, § 3; Laws 1981, LB 134, § 2; Laws 1991, LB 232, § 2; Laws 1997, LB 49, § 3; Laws 2000, LB 1021, § 2.

49-1404 Administrative action, defined.

Administrative action shall mean any decision on, or proposal, consideration, enactment, or defeat of any rule, regulation, or other official policy action or nonaction by any executive agency, or any policy matter which is within the official jurisdiction of an executive agency.

Source: Laws 1976, LB 987, § 4.

49-1405 Ballot question, defined.

(1) Ballot question shall mean any question which is submitted or which is intended to be submitted to a popular vote at an election, including, but not limited to, a question submitted or intended to be submitted by way of initiative, referendum, recall, or judicial retention, whether or not it qualifies for the ballot.

(2) Ballot question shall also mean any question which has been submitted to a popular vote at an election as a result of legislative action or adoption of a resolution by a political subdivision to place an issue or issues on the ballot.

Source: Laws 1976, LB 987, § 5; Laws 1991, LB 534, § 1; Laws 1998, LB 632, § 2; Laws 2009, LB626, § 2.

49-1406 Ballot question committee, defined.

Ballot question committee shall mean any committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for

the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.

Source: Laws 1976, LB 987, § 6.

49-1407 Business, defined.

Business shall mean any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity, or entity.

Source: Laws 1976, LB 987, § 7; Laws 1993, LB 121, § 304.

49-1408 Business with which the individual is associated or business association, defined.

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest. An individual who occupies a confidential professional relationship protected by law shall be exempt from this section. This section shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

Source: Laws 1976, LB 987, § 8; Laws 1986, LB 548, § 12; Laws 1993, LB 121, § 305; Laws 1994, LB 884, § 67.

49-1409 Candidate, defined.

(1) Candidate shall mean an individual: (a) Who files, or on behalf of whom is filed, a fee, affidavit, nomination papers, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus, committee, or convention is certified to the appropriate filing official; (c) who is an officeholder who is the subject of a recall vote; or (d) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. An elected officeholder shall, if eligible under law, be considered to be a candidate for reelection to that same office for the purposes of the Nebraska Political Accountability and Disclosure Act only.

(2) Candidate shall not include any individual who is a candidate within the meaning of the Federal Election Campaign Act of 1971, 2 U.S.C. 431, as such section existed on January 1, 2006.

Source: Laws 1976, LB 987, § 9; Laws 1980, LB 535, § 1; Laws 2005, LB 242, § 3.

49-1410 Candidate committee, defined.

Candidate committee shall mean the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization, except that the candidate for Lieutenant Governor shall not have a separate candidate committee but shall be included in the candidate committee with the candidate for Governor of the same political party.

Source: Laws 1976, LB 987, § 10; Laws 1980, LB 535, § 2; Laws 2001, LB 768, § 11.

49-1411 Closing date, defined.

Closing date shall mean the date through which a campaign statement is required to be complete.

Source: Laws 1976, LB 987, § 11.

49-1412 Commission, defined.

Commission shall mean the Nebraska Accountability and Disclosure Commission created by section 49-14,105.

Source: Laws 1976, LB 987, § 12.

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.

49-1414 Compensation, defined.

Compensation shall mean anything of monetary value received or to be received from a person, whether in the form of a fee, salary, forbearance, forgiveness, or any other form of recompense.

Source: Laws 1976, LB 987, § 14.

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.

49-1416 Election, defined.

Election shall mean a primary, general, special, or other election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election shall include a vote on a ballot question.

Source: Laws 1976, LB 987, § 16; Laws 1997, LB 49, § 4.

49-1417 Elective office, defined.

Elective office shall mean a public office filled by an election, except for federal offices. A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office.

Source: Laws 1976, LB 987, § 17.

49-1418 Executive agency, defined.

Executive agency shall mean a board, commission, agency, or other body in the executive branch of the state government.

Source: Laws 1976, LB 987, § 18.

49-1419 Expenditure, defined.

(1) Expenditure shall mean a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

(2) Expenditure shall include a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure shall not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure;

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders;

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference;

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting; or

(e) An expenditure for nonpartisan voter registration activities. This subdivision shall not apply if a candidate or a group of candidates sponsors, finances, or is identified by name with the activity. This subdivision shall apply to an activity performed pursuant to the Election Act by an election commissioner or other registration official who is identified by name with the activity.

(4) Expenditure for purposes of sections 49-1480 to 49-1492.01 shall mean an advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure shall not include payments for transportation by lobbyists or the cost of communicating positions from a principal to a lobbyist or from a lobbyist to a principal.

Source: Laws 1976, LB 987, § 19; Laws 1979, LB 162, § 1; Laws 1994, LB 76, § 567; Laws 1997, LB 49, § 5; Laws 2005, LB 242, § 5.

Cross References

Election Act, see section 32-101.

49-1420 Filed, filer, and filing official; defined.

(1) Filed shall mean the receipt by the appropriate filing official of a statement or report required to be filed under the Nebraska Political Accountability and Disclosure Act.

(2) Filer shall mean each person required to file a statement or report pursuant to the act.

(3) Filing official shall mean the official designated pursuant to the act to receive required statements and reports.

Source: Laws 1976, LB 987, § 20; Laws 2005, LB 242, § 6.

49-1421 Financial transaction, defined.

Financial transaction shall mean a loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value.

Source: Laws 1976, LB 987, § 21.

49-1422 Fundraising event, defined.

Fundraising event shall mean an event such as a dinner, reception, testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by such means as purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services.

Source: Laws 1976, LB 987, § 22.

49-1423 Gift, defined.

Gift shall mean a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a campaign contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, a gift received from a relative, a breakfast, luncheon, dinner, or other refreshments consisting of food and beverage provided for immediate consumption, or the occasional provision of transportation within the State of Nebraska.

Source: Laws 1976, LB 987, § 23; Laws 2000, LB 1021, § 3.

49-1424 Government body, defined.

Government body shall mean an authority, department, commission, committee, council, board, bureau, division, office, legislative body, or other agency in the executive, legislative, or judicial branch of state government or of one or more political subdivisions thereof or a school district, state college, state university, or other state-supported institution of higher education.

Source: Laws 1976, LB 987, § 24.

49-1425 Immediate family, defined.

Immediate family shall mean a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes.

Source: Laws 1976, LB 987, § 25.

49-1426 Income, defined.

Income shall mean any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital

gain, or any other form of recompense then constituting income under the Internal Revenue Code.

Source: Laws 1976, LB 987, § 26.

49-1427 Independent committee, defined.

Independent committee shall mean a committee other than a candidate, ballot question, or political party committee.

Source: Laws 1976, LB 987, § 27; Laws 1980, LB 535, § 4.

49-1428 Independent expenditure, defined.

Independent expenditure shall mean an expenditure as defined in section 49-1419 by a person if the expenditure is not made at the direction of, under the control of, or with the cooperation of another person and if the expenditure is not a contribution to a committee.

Source: Laws 1976, LB 987, § 28; Laws 1997, LB 420, § 16.

49-1429 Influencing, defined.

Influencing shall mean promoting, supporting, affecting, modifying, opposing, or delaying by any means, including the providing of or use of information, statistics, studies, or analyses.

Source: Laws 1976, LB 987, § 29.

49-1430 In-kind contribution or expenditure, defined.

In-kind contribution or expenditure shall mean a contribution as defined in section 49-1415 or expenditure as defined in subsections (1), (2), and (3) of section 49-1419, other than money.

Source: Laws 1976, LB 987, § 30.

49-1431 Legislative action, defined.

Legislative action shall mean introduction, sponsorship, support, opposition, consideration, debate, voting, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a committee or the Legislature.

Source: Laws 1976, LB 987, § 31.

49-1432 Loan, defined.

Loan shall mean a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or part.

Source: Laws 1976, LB 987, § 32.

49-1433 Lobbying, defined.

Lobbying shall mean the practice of promoting or opposing for another person, as defined in section 49-1438, the introduction or enactment of legislation or resolutions before the Legislature or the committees or the members

thereof, and shall also include the practice of promoting or opposing executive approval of legislation or resolutions.

Source: Laws 1976, LB 987, § 33.

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.

49-1434 Principal, lobbyist, defined.

(1) Principal means a person who authorizes a lobbyist to lobby in behalf of that principal.

(2) Lobbyist means a person who is authorized to lobby on behalf of a principal and includes an officer, agent, attorney, or employee of the principal whose regular duties include lobbying.

(3) Principal or lobbyist does not include:

(a) A public official or employee of a branch of state government, except the University of Nebraska, or an elected official of a political subdivision who is acting in the course or scope of his or her office or employment;

(b) Any publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business;

(c) An employee of a principal or lobbyist whose duties are confined to typing, filing, and other types of clerical office work;

(d) Any person who limits his or her activities (i) to appearances before legislative committees and who so advises the committee at the time of his or her appearance whom he or she represents or that he or she appears at the invitation of a named member of the Legislature or at the direction of the Governor or (ii) to writing letters or furnishing written material to individual members of the Legislature or to the committees thereof;

(e) Any individual who does not engage in lobbying for another person as defined in section 49-1438; or

(f) An employee of a political subdivision whose regular employment duties do not ordinarily include lobbying activities as long as such employee is not additionally compensated for such lobbying activities, other than his or her regular salary, and is not reimbursed for any lobbying expenditures except his or her travel, lodging, and meal expenses and the meal expenses for members of the Legislature.

Source: Laws 1976, LB 987, § 34; Laws 1979, LB 162, § 2; Laws 1991, LB 232, § 3; Laws 2006, LB 940, § 3.

49-1435 Nonministerial, defined.

Nonministerial shall mean an action other than an action which a person performs in a prescribed manner under prescribed circumstances in obedience

to the mandate of legal authority, without the exercise of personal judgment regarding whether to take the action.

Source: Laws 1976, LB 987, § 35.

49-1436 Official in the executive branch, defined.

Official in the executive branch shall mean an official holding a state executive office as provided in Article IV, Constitution of Nebraska, including Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, Tax Commissioner, the heads of such other executive departments as set forth in the Constitution or as may be established by law, a deputy thereto, or a member of any state board or commission. This includes an individual who is elected or appointed and has not yet taken, or an individual who is nominated for appointment to, any of the offices enumerated in this section.

Source: Laws 1976, LB 987, § 36.

49-1437 Official in the legislative branch, defined.

Official in the legislative branch shall mean a member or member-elect of the Legislature, a member of an official body established by and responsible to the Legislature, or employee thereof other than an individual employed by the state in a clerical or nonpolicymaking capacity.

Source: Laws 1976, LB 987, § 37.

49-1438 Person, defined.

Person shall mean a business, individual, proprietorship, firm, partnership, limited liability company, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or other organization or group of persons acting jointly.

Source: Laws 1976, LB 987, § 38; Laws 1993, LB 121, § 306.

49-1439 Political merchandise, defined.

Political merchandise shall mean goods such as bumper stickers, pins, hats, beverages, literature, or other items sold by a person at a fundraiser or to the general public for publicity or for the purpose of raising funds to be used in supporting or opposing a candidate for nomination for or election to an elective office or in supporting or opposing the qualification, passage, or defeat of a ballot question.

Source: Laws 1976, LB 987, § 39.

49-1440 Political party, defined.

Political party shall mean a political party which has a right under law to have the names of its candidates listed on the ballot in a general election.

Source: Laws 1976, LB 987, § 40.

49-1441 Political party committee, defined.

Political party committee shall mean a state central, district, or county committee of a political party which is a committee.

Source: Laws 1976, LB 987, § 41.

49-1442 Public employee, defined.

Public employee shall mean an employee of the state or a political subdivision thereof.

Source: Laws 1976, LB 987, § 42.

49-1443 Public official, defined.

Public official shall mean an official in the executive branch, an official in the legislative branch, or an elected or appointed official in the judicial branch of the state government or a political subdivision thereof; any elected or appointed member of a school board; and an elected or appointed member of a governing body of a state institution of higher education.

Source: Laws 1976, LB 987, § 43.

49-1443.01 Relative, defined.

Relative shall mean any person related to another by blood or marriage to the third degree of consanguinity, including a foster parent, foster child, stepparent, stepchild, and adopted children and their adoptive parents.

Source: Laws 2000, LB 1021, § 4.

49-1444 State elective office, defined.

State elective office shall mean the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of a board or commission with one or more election districts of more than one county, and member of the Legislature.

Source: Laws 1976, LB 987, § 44.

(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.

Generally, the Nebraska Political Accountability and Disclosure Act requires candidates for elective state office to form candidate committees and file campaign statements with the Nebraska Accountability and Disclosure Commission once the

candidate has raised, received, or expended \$5,000 in a calendar year. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

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.

49-1446.01 Committee; certain expenditure of funds authorized.

(1) No committee, other than a political party committee, may expend funds except to make an expenditure, as defined in subsection (1), (2), or (3) of section 49-1419, or as provided in section 49-1446.03 or 49-1469.06.

(2) A candidate committee of an officeholder may make expenditures for the payment of installation and use of telephone and telefax machines located in an officeholder's public office and used by such officeholder.

(3) Any committee, including a political party committee, may invest funds in investments authorized for the state investment officer in the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Nothing in this section shall prohibit a separate segregated political fund from disbursing funds as provided in section 49-1469.06.

Source: Laws 1981, LB 134, § 5; Laws 1988, LB 1136, § 2; Laws 1988, LB 1174, § 1; Laws 1992, LB 722, § 1; Laws 1994, LB 1066, § 39; Laws 1997, LB 49, § 8; Laws 2002, LB 1086, § 3; Laws 2005, LB 242, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

49-1446.02 Committee; certain expenditure of funds; prohibited.

Notwithstanding any other provision of the Nebraska Political Accountability and Disclosure Act, no committee shall expend funds for the purchase or payment of:

(1) Clothes or medical or dental expenses of a candidate or the members of his or her immediate family;

(2) Installment payments for an automobile owned by a candidate;

(3) Mortgage or rental payments for a permanent residence of a candidate;

(4) The satisfaction of personal debts, including installment payments on personal loans, except campaign loans subject to reporting required by subsection (2) of section 49-1456;

(5) Personal services, including the services of a lawyer or accountant, except campaign services subject to reporting pursuant to the provisions of section 49-1455; or

(6) Office supplies, staff, or furnishings for the public office for which an individual is a candidate for nomination or election except as set out in subsection (2) of section 49-1446.01.

Source: Laws 1981, LB 134, § 6; Laws 1992, LB 722, § 2; Laws 2005, LB 242, § 10.

49-1446.03 Committee; expenditure of funds; authorized.

Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any committee may, in addition to the expenditures set forth in section 49-1446.01, make expenditures for the following:

(1) The necessary continued operation of the campaign office or offices of the candidate or political committee;

(2) Social events primarily for the benefit of campaign workers and volunteers or constituents;

(3) Obtaining public input and opinion;

- (4) Repayment of campaign loans incurred prior to election day;
- (5) Newsletters and other communications for the purpose of information, thanks, acknowledgment, or greetings or for the purpose of political organization and planning;
- (6) Gifts of acknowledgment, including flowers and charitable contributions, except that gifts to any one individual shall not exceed fifty dollars in any one calendar year;
- (7) Meals, lodging, and travel by an officeholder related to his or her candidacy and for members of the immediate family of the officeholder when involved in activities related to his or her candidacy;
- (8) Conference fees, meals, lodging, and travel by an officeholder and his or her staff when involved in activities related to the duties of his or her public office; and
- (9) In the case of the candidate committee for the Governor, conference fees, meals, lodging, and travel by the Governor, his or her staff, and his or her immediate family, when involved in activities related to the duties of the Governor.

Source: Laws 1981, LB 134, § 7; Laws 2005, LB 242, § 11.

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.

49-1446.05 Repealed. Laws 2001, LB 242, § 27.

49-1446.06 Transferred to section 49-1474.02.

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.

A candidate for an elective state office is responsible for filing all statements and reports required to be filed by his or her candidate committee pursuant to the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation Act. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-1448 Commission; rules; purpose.

The commission shall promulgate rules for the withdrawal of funds from a committee account for petty cash expenditures and for keeping records of the withdrawals.

Source: Laws 1976, LB 987, § 48.

49-1449 Committee; statement of organization; filing; procedure; late filing fees.

(1) Each committee shall file a statement of organization pursuant to this section and pay a registration fee pursuant to section 49-1449.01 with the commission. Except as provided in subsection (2) of this section, such statement of organization shall be filed and fee paid within ten days after a committee is formed. The commission shall maintain a statement of organization filed by a committee until notified of the committee's dissolution. Any person who fails to file with the commission a statement of organization required by this subsection 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 subsection, not to exceed seven hundred fifty dollars.

(2) If the committee is formed within thirty days prior to an election for which the committee exists, the statement of organization shall be filed and registration fee paid within two business days after the committee is formed. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of one hundred dollars for each day the statement remains not filed in violation of this subsection, not to exceed one thousand dollars.

Source: Laws 1976, LB 987, § 49; Laws 1980, LB 535, § 7; Laws 1999, LB 416, § 5; Laws 2001, LB 242, § 3; Laws 2003, LB 349, § 1; Laws 2007, LB527, § 2.

49-1449.01 Committee; statement of organization; registration fee; failure to perfect filing; effect.

(1) At the time that each committee files its statement of organization pursuant to section 49-1449, the committee shall pay to the commission a registration fee of one hundred dollars. The filing of a statement of organization is not perfected unless accompanied by the registration fee.

(2) A committee which has not perfected its filing of a statement of organization by the date due as specified in section 49-1449 shall not make or receive contributions or expenditures until such time as the filing of the statement of organization is perfected, except that:

(a) A committee may make an expenditure to pay the registration fee; and

(b) A committee may make expenditures for thirty days after the termination of its registration if the expenditures are part of the process of dissolving the committee and the committee dissolves within thirty days after the termination of its registration.

(3) The registration fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund.

Source: Laws 2007, LB527, § 3.

49-1450 Committee; statement of organization; contents, enumerated.

The statement of organization required by section 49-1449 shall include the following information:

(1) The name, street address, and telephone number, if any, of the committee. The committee address may be the home address of the candidate or treasurer of the committee;

(2) The name, street address, and telephone number, if any, of each person, other than an individual, that is a member of the committee;

(3) The full name, street address, and telephone number, if any, of the treasurer and other principal officers of the committee;

(4) The name and address of the financial institution in which the official committee depository is located, and the name and address of each financial institution in which a secondary depository is or is intended to be located;

(5) The full name of and office sought by each candidate and a brief statement identifying the substance of each ballot question supported or opposed by the committee;

(6) Identification of the committee as a candidate committee, political party committee, independent committee, or ballot question committee if it is identifiable as such a committee; and

(7) Such other information as may be required by the rules and regulations of the commission.

Source: Laws 1976, LB 987, § 50.

49-1451 Statement of organization; change; late filing fee.

When any of the information required in a statement of organization is changed, such change shall be reported when the next campaign statement is required to be filed. Any person who fails to report a change to the commission under this section shall pay to the commission a late filing fee of twenty-five dollars for each day the change remains not reported in violation of this section, not to exceed seven hundred fifty dollars.

Source: Laws 1976, LB 987, § 51; Laws 1980, LB 535, § 8; Laws 1999, LB 416, § 6.

49-1452 Repealed. Laws 1983, LB 230, § 4.

49-1453 Committee; dissolution; procedure.

(1) A committee may be dissolved by the filing of a statement of dissolution with the commission, the payment of all fees, penalties, and interest which may be owed, and complying with the rules and regulations of the commission for dissolution of committees. Except as otherwise provided in subsection (2) of this section, no committee shall be dissolved until such statement is filed and such payments are made.

(2) A committee may be dissolved if the commission determines that fees, penalties, and interest owed by a committee are uncollectible.

Source: Laws 1976, LB 987, § 53; Laws 2000, LB 438, § 4; Laws 2005, LB 242, § 14.

49-1454 Committee; campaign statement; filing; period covered.

Any committee which supports or opposes a candidate or the qualification, passage, or defeat of a ballot question shall file a legibly printed or typed campaign statement pursuant to sections 49-1459 and 49-1461. The period covered by a campaign statement is the period beginning with the day after the closing date of the most recent campaign statement filed and ending with the closing date of the campaign statement due. If the committee filing the campaign statement has not previously filed a campaign statement, the period covered shall begin on the date the person or persons forming the committee raised, received, or spent any money.

Source: Laws 1976, LB 987, § 54; Laws 1980, LB 535, § 9; Laws 1983, LB 230, § 3; Laws 1987, LB 480, § 4.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both

the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

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.

49-1458 Late contribution; how reported; late filing fee.

(1) A committee which receives a late contribution shall report the contribution to the commission by filing a report within two days after the date of its receipt. The report may be filed by hand delivery, facsimile transmission, telegraph, express delivery service, or any other written means of communication, including electronic means approved by the commission, and need not contain an original signature.

(2) The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor, the amount of the contribution, and the date of receipt.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(4) Any committee which fails to file a report of late contributions 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 committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late contribution which was required to be reported, not to exceed ten percent of the amount of the late contribution which was required to be reported.

(5) For purposes of this section, late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 1976, LB 987, § 58; Laws 1996, LB 1263, § 1; Laws 1999, LB 416, § 10; Laws 2000, LB 438, § 5; Laws 2005, LB 242, § 15; Laws 2007, LB434, § 1.

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.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-1460 Repealed. Laws 1983, LB 230, § 4.

49-1461 Ballot question committee; campaign statement; filing dates.

In addition to the campaign statements required to be filed pursuant to sections 49-1459 and 49-1462, a ballot question committee shall file a campaign statement as required by the Nebraska Political Accountability and Disclosure Act according to the following schedule:

(1) The first campaign statement shall be filed not later than the last day of the calendar month in which the petition form is filed with the Secretary of State pursuant to section 32-1405. The closing date for the campaign statement shall be five days before the deadline for filing the first campaign statement;

(2) Additional campaign statements shall be filed on the last day of each calendar month thereafter except for the calendar month during which the signed petitions must be filed with the Secretary of State as provided in section 32-1407. The closing date for such campaign statements shall be five days before the deadline for filing the statement; and

(3) A final campaign statement shall be filed not later than thirty days after the deadline for filing petitions with the Secretary of State as provided in

section 32-1407. The closing date for the campaign statement shall be twenty-five days after the deadline for filing such petitions.

The campaign statements required to be filed pursuant to this section shall be filed whether or not petitions have or will be filed with the Secretary of State. Any person who fails to file a campaign statement with the commission pursuant to this section shall be subject to late filing fees as provided in section 49-1463.

Source: Laws 1976, LB 987, § 61; Laws 1980, LB 535, § 12; Laws 1989, LB 637, § 4; Laws 1991, LB 534, § 2; Laws 1994, LB 76, § 568.

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.

49-1462 Committee; campaign statement; when filed; period covered.

Unless otherwise required to file an election campaign statement as required by section 49-1459, a committee shall file a campaign statement with a closing date of December 31 of such year not later than January 31 of the following year. The period covered by the campaign statement filed pursuant to this section shall begin from the day after the closing date of the previous campaign statement filed.

Source: Laws 1976, LB 987, § 62; Laws 1987, LB 480, § 6; Laws 1993, LB 587, § 15.

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.

49-1463.02 Late filing fees and civil penalties; interest.

Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. The interest shall begin to accrue thirty days after the commission sends notice to the person of the assessment of the late filing fee or civil penalty. A written request filed with the commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the commission grants or denies the request. The commission may waive the payment of accrued interest in the amount of twenty-five dollars or less.

Source: Laws 2000, LB 438, § 9; Laws 2007, LB527, § 4.

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.

49-1465 Campaign statement; verification statement; signature; requirements.

(1) A campaign statement filed by a committee shall:

(a) Be signed by the committee treasurer; and

(b) Contain a verification statement which states that the treasurer used all reasonable diligence in its preparation, that to the treasurer's knowledge it is true and complete, and if the committee is a candidate committee, that to the best of the candidate's knowledge the statement is true and complete.

(2) The verification statement shall be signed by the treasurer and, in the case of a candidate committee, by the candidate.

(3) The verification statement shall be required to perfect the filing of the campaign statement. A campaign statement shall cover the period beginning the day after the closing date of the last campaign statement and end on the closing date as specified in the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 65; Laws 1999, LB 581, § 2.

49-1466 Dissolved candidate committee; unexpended funds; how treated.

Any person, who after being a candidate for office dissolves the candidate committee as provided in section 49-1453, may transfer any unexpended funds from such committee to another candidate committee, a political party committee, or a tax-exempt charitable institution or may return such unexpended funds to the contributors of the funds upon dissolution of the candidate committee.

Source: Laws 1976, LB 987, § 66; Laws 2000, LB 438, § 8.

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.

49-1468 Contribution or expenditure made by a dependent minor; contribution controlled by another; how reported.

(1) Any contribution or expenditure made by a dependent minor shall be reported in the name of the minor's parent or guardian.

(2) Any contribution which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution and shall be regarded as a contribution attributable to both persons.

Source: Laws 1976, LB 987, § 68.

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.

49-1469.01 Transferred to section 49-1476.

49-1469.02 Transferred to section 49-1476.01.

49-1469.03 Transferred to section 49-1476.02.

49-1469.04 Transferred to section 49-1479.02.

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, stockholders, 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.

49-1470 Campaign statements; public information; copies, cost; duration kept.

(1) Campaign statements shall be open for public inspection and reproduction, commencing as soon as practicable, but not later than the fifth business day following the day on which they were received, during regular business hours.

(2) Copies of statements or parts of statements shall be provided by the officials with whom they are filed at a cost of not to exceed fifty cents per page.

(3) Campaign statements shall be preserved for a period of not less than eighteen months by the officials other than the commission with whom they are filed, and not less than five years by the commission.

(4) No fee or charge shall be collected by any official for the filing of any campaign statement, or for the forms upon which statements are to be prepared, except as otherwise provided by law.

Source: Laws 1976, LB 987, § 70; Laws 1983, LB 479, § 1.

49-1471 Contribution or expenditure in excess of fifty dollars; not to be made in cash; violation; penalty.

A contribution or expenditure of more than fifty dollars shall not be made or accepted in cash. Contributions and expenditures of more than fifty dollars, other than an in-kind contribution or expenditure, shall be made by written instrument containing the names of the payor and the payee. Any person who knowingly violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 71; Laws 1977, LB 41, § 44.

49-1472 Anonymous contribution; restrictions on use; other contributions; how treated; violation; penalty.

(1) A person shall not accept or expend an anonymous contribution. An anonymous contribution received by a person shall not knowingly be deposited but shall be given to a tax-exempt charitable organization. The charitable organization receiving the contribution shall provide the person with a receipt. The person shall give a copy of the receipt to the commission.

(2) A contribution received as the result of a fundraising event, or from the sale of political merchandise, or from membership fees, dues, or subscriptions for political purposes to an independent committee that is fifty dollars or less shall not be considered an anonymous contribution.

(3) A person making a contribution pursuant to subsection (2) of this section which is fifty dollars or more shall furnish the recipient with the donor's name, address, and the total amount contributed.

(4) Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 72; Laws 1977, LB 41, § 45.

49-1473 Contributions; legal name of contributor; violation; penalty.

A contribution shall not be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 73; Laws 1977, LB 41, § 46.

49-1474 Political newsletter or mass mailing; not to be sent at public expense; violation; penalty.

No political newsletter or other campaign mass mailing shall be sent at public expense by or on behalf of any elected official after that person has announced his or her candidacy for any office. An elected official violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 74; Laws 1977, LB 41, § 47; Laws 1986, LB 548, § 13.

49-1474.01 Political material; disclaimer requirements; violation; penalty.

(1) The person, except an individual or individuals acting independently utilizing their own personal resources, who pays for the production, distribution, or posting of a billboard, placard, poster, pamphlet, or other printed matter relating to a candidate or ballot question shall cause a disclaimer containing the name and street address of the person to appear on such matter. The person who pays for a radio or television advertisement relating to a candidate or ballot question shall cause a disclaimer containing the name of such person to be included in the advertisement, and the radio or television station shall, for a period of at least six months, keep the street address of such person on file and divulge it to any person upon request.

(2) The size and placement of the disclaimer shall be determined by rules and regulations adopted and promulgated by the commission. The rules and regulations shall exempt from the disclaimer required by this section windshield stickers, yard signs, bumper stickers, campaign buttons, and balloons and may also exempt other items relating to a candidate or committee which are printed or reproduced at the request of such candidate or committee.

(3) Any person who knowingly violates the provisions of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1980, LB 535, § 20; Laws 1987, LB 479, § 1; Laws 1989, LB 637, § 5; Laws 1995, LB 399, § 3.

49-1474.02 Dissemination of message by telecommunication or electronic means; requirements.

(1) Any person who makes an expenditure reportable under the Nebraska Political Accountability and Disclosure Act to disseminate by any means of telecommunication a prerecorded message or a recorded message relating to a candidate or ballot question shall include, immediately preceding the message, the name of the person making the expenditure. Such messages shall be disseminated only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the messages.

(2) Any person who makes an expenditure reportable under the act to disseminate by any means of telecommunication a message relating to a candidate or ballot question which is not a recorded message or a prerecorded message shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure. If the message is disseminated through an employee or agent of the person making the expenditure, the employee or agent shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure.

(3) Any person who makes an expenditure reportable under the act to disseminate by any electronic means, including the Internet or email, a message relating to a candidate or ballot question shall include in the message the name of the person making the expenditure.

Source: Laws 2001, LB 242, § 2; R.S.1943, (2003), § 49-1446.06; Laws 2005, LB 242, § 24; Laws 2008, LB720, § 1.

49-1475 Contribution; intermediary or agent of contributor; disclosure; violation; penalty.

Any person who accepts a contribution, other than by written instrument, on behalf of another and acts as the intermediary or agent of the person from whom the contribution was accepted shall disclose to the recipient of the contribution the intermediary's own name and address and the name and address of the actual source of the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 75; Laws 1977, LB 41, § 48.

49-1476 Lottery contractor; legislative findings.

The Legislature finds that in sponsoring a lottery, the state undertakes a unique enterprise which can succeed only if the public has confidence in the integrity of the lottery and the process by which government decisions relating to the lottery are made. The Legislature finds that there is a compelling state interest in ensuring the integrity and the appearance of integrity of elections for state elective office and of the state-sponsored lottery. The Legislature further finds that the practice of contributions being given to candidates for state elective offices by individuals or entities holding contracts with the state to supply goods or services in connection with the state-sponsored lottery for significant monetary prizes contributes to actual corruption or the appearance of corruption and diminishes public confidence in government and in the state-

sponsored lottery. The Legislature finds that sections 49-1476.01 and 49-1476.02 are consistent with these findings.

Source: Laws 1995, LB 28, § 4; R.S.1943, (2003), § 49-1469.01; Laws 2005, LB 242, § 25.

49-1476.01 Lottery contractor; contributions and expenditures prohibited; penalty.

(1) A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in section 9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract.

(2) A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in sections 49-1469 to 49-1469.08, or by anyone acting on behalf of the person, officer, or fund.

(3) A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

Source: Laws 1995, LB 28, § 5; R.S.1943, (2003), § 49-1469.02; Laws 2005, LB 242, § 26.

49-1476.02 Lottery contractor contribution; receipt prohibited; penalty.

(1) No person, including a candidate or candidate committee, shall accept or receive any contribution prohibited by section 49-1476.01. A person who knowingly or intentionally accepts any such contribution shall be guilty of a Class III misdemeanor.

(2) Any person, including a candidate or candidate committee, who receives a contribution prohibited by section 49-1476.01 shall, upon being notified of the violation by the commission, transfer a sum equal to the amount of such contribution to a tax-exempt charitable institution.

Source: Laws 1995, LB 28, § 6; R.S.1943, (2003), § 49-1469.03; Laws 2005, LB 242, § 27.

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 contribution. 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.

49-1478 Expenditure; limitations; reports required; violations; penalty.

(1) An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an

advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files an agent's expenditure report as provided in subsection (3) of this section. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) An expenditure shall not be made, other than for overhead or normal operating expenses, by a person gathering petition signatures on behalf of or for the benefit of a person, including a ballot question committee, unless the expenditure is reported by the ballot question committee as if the expenditure were made directly by the committee, or unless the person gathering petition signatures files an agent's expenditure report as provided in subsection (3) of this section. The person gathering petition signatures shall make known to the committee all information required to be reported by the committee. For purposes of this section, petition signature means a signature affixed to a petition for the purpose of qualifying a ballot question to appear on a ballot. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(3) A person gathering petition signatures, an agent, or an independent contractor who is required to file an agent's report shall file a separate agent's report for each person on whose behalf an expenditure is made. An agent's report shall be filed with the commission within ten days after the end of the calendar month in which the expenditure is made. An agent's report shall include:

(a) The name, permanent address, temporary address, permanent telephone number, and temporary telephone number of the person making expenditures for the purpose of gathering signatures, the agent, or the independent contractor;

(b) The name, address, and telephone number of the person on whose behalf the expenditure is made;

(c) The name, permanent address, and temporary address of the person to whom the expenditure is made, except that if the expenditure is solely for the services of an individual circulating petitions, such individual's name and address shall not be included;

(d) The date and amount of each expenditure; and

(e) A description of the goods or services purchased and the purpose of the goods or services.

(4) A person required to report under subsection (3) of this section shall include in the report the total amount paid to individual petition circulators during the reporting period 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, § 78; Laws 1977, LB 41, § 51; Laws 1997, LB 49, § 9; Laws 2008, LB39, § 7.

49-1478.01 Late independent expenditure; reports required; late filing fee.

(1) An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the commission by filing within two days after the date of the expenditure the

committee's full name and street address, the amount of the expenditure, and the date of the expenditure. The report shall include (a) the full name and street address of the recipient of the expenditure, (b) the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure, and (c) the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed. Filing of a report of a late independent expenditure may be by any written means of communication, including electronic means approved by the commission, and need not contain an original signature. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(2) A committee which fails to file a report of a late independent expenditure 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 committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late independent expenditure which was required to be reported, not to exceed ten percent of the amount of the late independent expenditure which was required to be reported.

(3) For purposes of this section, late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 2000, LB 438, § 6; Laws 2007, LB434, § 2.

49-1479 Contributions made for transfer or in behalf of a committee; unlawful; exceptions; penalty.

(1) Except as provided by subsections (3) and (4) of section 49-1479.01, a contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular candidate committee.

(2) A candidate committee shall not make a contribution to or an independent expenditure in behalf of another candidate committee, except that a candidate committee may make a contribution to another candidate committee for a fundraising event of such other candidate committee.

(3) Any person violating the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 79; Laws 1977, LB 41, § 52; Laws 1980, LB 535, § 16; Laws 1987, LB 480, § 8.

49-1479.01 Earmarked contribution; requirements; report; late filing fee; violation; penalty.

(1) Any contribution by a person made on behalf of or to a candidate or committee, including contributions which are in any way earmarked or otherwise directed to the candidate or committee through an intermediary or agent, shall be considered to be a contribution from the person to the candidate or committee.

(2) For purposes of this section, earmarked shall mean a designation, instruction, or encumbrance, including those which are direct or indirect, express or

implied, or oral or written, which results in any part of a contribution or expenditure, including any in-kind expenditure made in exchange for a contribution, being made to or expended on behalf of a candidate or a committee.

(3) Any intermediary or agent, other than a committee, which receives an earmarked contribution shall forward the earmarked contribution to the recipient candidate or committee within ten days after receipt of such contribution.

(4) An intermediary or agent which is not a committee shall file a report of the earmarked contribution with the commission within ten days after receipt of the contribution. Any committee which is an intermediary or agent shall file a report of the earmarked contribution with the commission by the date the next campaign statement is required to be filed. The report of the earmarked contribution filed pursuant to this section shall be on a form prescribed by the commission.

(5) Any intermediary or agent making an earmarked contribution shall disclose to the recipient of the earmarked contribution the name and address of the intermediary or agent and the actual source of the contribution by providing the recipient with a copy of the report of the earmarked contribution at the time that the earmarked contribution is made.

(6) Any person or committee which fails to file a report of an earmarked contribution with the commission as required by this section 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.

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

Source: Laws 1987, LB 480, § 5; Laws 1996, LB 1263, § 5; Laws 1999, LB 416, § 16; Laws 2005, LB 242, § 28.

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

49-1480 Lobbyist; registration; application; contents.

Every person employed, retained, or authorized as a lobbyist shall, before commencing any lobbying activity, file an application with the Clerk of the Legislature for registration as a lobbyist, and if the clerk is satisfied that the application has been properly prepared the registration shall be deemed to be complete. The application shall be on a form prescribed by the clerk and approved by the Executive Board of the Legislative Council, and shall include as a minimum the following:

- (1) The name, permanent residence address, and office address of the lobbyist;
- (2) The name and address of the principal of such lobbyist;
- (3) The nature of the business of such principal and the amounts or sums given or to be given the lobbyist as compensation or reimbursement for lobbying. A lobbyist who is salaried or retained by a principal need only report that portion of compensation or reimbursement reasonably attributable to lobbying;
- (4) A description of the business activity of the lobbyist;
- (5) An identification of the matters on which the principal or lobbyist expects to lobby;
- (6) If the principal is an industry, trade, or professional association, a specific description of the industry, trade, or profession represented by the principal and the names and addresses of its officers;
- (7) If the principal is not an industry, trade, or professional association, a specific description of the interests and groups represented by the principal and the names and addresses of its officers; and
- (8) The name and address of any official in the legislative or executive branch, and of any members of any such official's staff or immediate family, who are employed by the lobbyist or any person acting on behalf of such lobbyist if such information is known or reasonably should have been known to the lobbyist.

Source: Laws 1976, LB 987, § 80; Laws 1979, LB 162, § 3; Laws 1997, LB 752, § 130; Laws 2001, LB 242, § 7.

49-1480.01 Application for registration; fee; collection; registration renewal.

(1) The Clerk of the Legislature shall collect a fee of two hundred dollars for an application for registration by a lobbyist for each principal if the lobbyist receives or will receive compensation for such lobbying. Except as provided by section 49-1434, a lobbyist who receives compensation shall include an individual who is an employee or member of a principal whose duties of employment, office, or membership include engaging in lobbying activities.

(2) A fee of fifteen dollars shall be collected for an application by a lobbyist for each principal if the lobbyist is not receiving and will not be receiving compensation for such lobbying. Any lobbyist who receives compensation who did not anticipate receiving such compensation at the time of application for registration shall, within five days of the receipt of any compensation, file an amended registration form which shall be accompanied by an additional fee of one hundred eighty-five dollars for such year.

(3) The registration of a lobbyist for each of his or her principals may be renewed by the payment of a fee as provided by subsections (1) and (2) of this section. Such fee shall be paid to the Clerk of the Legislature on or before December 31 of each calendar year. The registration of a lobbyist for each of his or her principals shall terminate as of the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided in this section.

Source: Laws 1994, LB 872, § 2; Laws 1994, LB 1243, § 3; Laws 2005, LB 242, § 30.

49-1481 List of registered lobbyists and principals; print in Legislative Journal; additional information; when.

(1) On the fourth legislative day of each legislative session, the Clerk of the Legislature shall insert the following in the Legislative Journal:

- (a) A list of the names of all lobbyists whose registration is then in effect;
- (b) The name of the principal in whose behalf the lobbyist is registered; and
- (c) Any additional information as directed by the Legislature.

(2) On the last legislative day of each week after the fourth legislative day, the clerk shall cause to be inserted in the Legislative Journal the names of any additional lobbyists and principals who have registered or who have changed their registration.

Source: Laws 1976, LB 987, § 81; Laws 2005, LB 242, § 31.

49-1482 Lobbyists and principals; registration fees; disbursement.

The Clerk of the Legislature shall charge a fee pursuant to section 49-1480.01 for each application for registration by a lobbyist for each principal. Such fees when collected shall be remitted to the State Treasurer. Three-fourths of such fees shall be credited to the Nebraska Accountability and Disclosure Commission Cash Fund and one-fourth to the Clerk of the Legislature Cash Fund.

Source: Laws 1976, LB 987, § 82; Laws 1977, LB 4, § 1; Laws 1982, LB 928, § 41; Laws 1994, LB 872, § 3; Laws 1994, LB 1243, § 4; Laws 2005, LB 242, § 32.

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.

49-1483.01 Repealed. Laws 2005, LB 242, § 70.

49-1483.02 Statement; exemption from filing.

By rule and regulation, the commission may provide for other criteria for an exemption from the filing of the quarterly statement by lobbyists and principals, pursuant to section 49-1483, if the commission finds all of the following: (1) That strict adherence to the Nebraska Political Accountability and Disclosure Act would result in duplicative reporting; (2) that the exemption would not result in information on lobbyists' or principals' receipts or expenditures being withheld from the public; and (3) that the exemption will not frustrate the purposes of the act.

Source: Laws 1991, LB 232, § 8; Laws 1994, LB 872, § 6; Laws 1994, LB 1243, § 7.

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.

49-1483.04 Repealed. Laws 1999, LB 7, § 1.

49-1484 Clerk of the Legislature; refer statements to commission; additional details.

The Clerk of the Legislature shall promptly refer all such statements to the commission which may require the lobbyist or the principal to furnish additional details with respect to the matters which are or should be included in such statements. The Legislature itself may at any time require the furnishing of such additional details.

Source: Laws 1976, LB 987, § 84; Laws 1994, LB 872, § 7; Laws 1994, LB 1243, § 8.

49-1485 Clerk of the Legislature; furnish summary of lobbyist and principal statements to Legislature and press; public records.

The Clerk of the Legislature shall prepare a summary of the statements filed pursuant to section 49-1483 and, upon request, furnish any member of the Legislature and any member of the press registered with the Legislature a copy of any summary. Each statement shall be public information. The clerk shall furnish a copy of any statement, upon request, to any member of the Legislature and to any member of the press registered with the Legislature.

Source: Laws 1976, LB 987, § 85; Laws 1991, LB 220, § 1; Laws 1994, LB 872, § 8; Laws 1994, LB 1243, § 9.

49-1486 Registration of lobbyists; period valid.

The registration of a lobbyist shall be valid for a period commencing with the filing of any registration as required by section 49-1480 and ending at the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided by section 49-1480.01 or the registration is terminated

prior to the end of the calendar year in the manner prescribed by rules and regulations adopted and promulgated by the commission.

Source: Laws 1976, LB 987, § 86; Laws 1977, LB 4, § 2; Laws 1994, LB 872, § 9; Laws 1994, LB 1243, § 10; Laws 2005, LB 242, § 34.

49-1487 Repealed. Laws 1979, LB 162, § 8.

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.

49-1489 Lobbyist; records and documents; preservation required; available to commission; exception.

Each lobbyist shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the statements required to be made pursuant to section 49-1483 for three years after the report containing

those items is filed. These records shall be made available for inspection upon request by the commission after reasonable notice. Nothing in this section shall require that a receipt for any food and drink expenditure be kept if such expenditure is in an amount of less than twenty-five dollars.

Source: Laws 1976, LB 987, § 89; Laws 1977, LB 4, § 3.

49-1490 Principal or lobbyist; prohibited acts relating to gifts; penalty.

(1) No principal, lobbyist, or person acting on behalf of either shall within one calendar month give any gifts with an aggregate value of more than fifty dollars to the following:

(a) An official or a member of the official's staff in the executive branch of state government;

(b) An official or a member of the official's staff in the legislative branch of state government; or

(c) A member of the immediate family of an official in the executive or legislative branch of state government.

(2) No official or member of the official's staff in the executive or legislative branch of state government or member of the official's immediate family shall within one calendar month accept from a principal, lobbyist, or person acting on behalf of either any gifts with an aggregate value of more than fifty dollars.

(3) An admission to a state-owned facility or a state-sponsored industry or event may be given by any sponsoring agency, political subdivision, or publicly funded postsecondary educational institution and accepted regardless of value.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 90; Laws 1977, LB 41, § 53; Laws 1979, LB 162, § 5; Laws 1981, LB 134, § 4; Laws 1988, LB 1174, § 2; Laws 1991, LB 232, § 6; Laws 2000, LB 1021, § 6.

49-1491 Principal, lobbyist, or person acting on behalf of either; false or misleading statements to public officials; prohibited.

A principal, lobbyist, or anyone acting on behalf of either, shall not knowingly or willfully make any false or misleading statement or misrepresentation of fact to any public official in the executive or legislative branch of state government.

Source: Laws 1976, LB 987, § 91; Laws 1979, LB 162, § 7.

49-1492 Lobbying; prohibited practices; violation; penalty.

(1) No person shall be employed as a lobbyist for compensation contingent in any manner upon the outcome of an administrative or legislative action.

(2) No person shall instigate the introduction of legislation for the purpose of obtaining employment in opposition thereto.

(3) No person shall attempt to influence the vote of the legislators on any matters pending or to be proposed by the promise of financial support or the financing of opposition to his candidacy at any future election.

(4) No person shall engage in practices which reflect discredit on the practice of lobbying or on the Legislature.

(5) Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 92; Laws 1977, LB 41, § 54.

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.

49-1495 Individuals appointed to office; statement of financial interests; filing; time; where; public information.

An individual appointed to an office specified in section 49-1493 shall, before assuming duties, file a statement for the preceding calendar year with the commission. When confirmation is required, the individual shall file a statement of financial interests for the preceding calendar year with the commission prior to the confirmation hearing or prior to assuming his or her duties, whichever comes first.

Source: Laws 1976, LB 987, § 95; Laws 1989, LB 815, § 2; Laws 1990, LB 534, § 1; Laws 2001, LB 242, § 11; Laws 2003, LB 349, § 2.

49-1496 Statement of financial interests; form; contents; enumerated.

(1) The statement of financial interests filed pursuant to sections 49-1493 to 49-14,104 shall be on a form prescribed by the commission.

(2) Individuals required to file under sections 49-1493 to 49-1495 shall file the following information for themselves:

(a) The name and address of and the nature of association with any business with which the individual was associated;

(b) The name and address of any entity in which a position of trustee was held;

(c) The name, address, and nature of business of a person or government body from whom any income in the value of one thousand dollars or more was received and the nature of the services rendered, except that the identification of patrons, customers, patients, or clients of such person from which employment income was received is not required;

(d) A description, but not the value, of the following, if the fair market value thereof exceeded one thousand dollars:

(i) The nature and location of all real property in the state, except the residence of the individual;

(ii) The depository of checking and savings accounts;

(iii) The issuer of stocks, bonds, and government securities; and

(iv) A description of all other property owned or held for the production of income, except property owned or used by a business with which the individual was associated;

(e) The name and address of each creditor to whom the value of one thousand dollars or more was owed or guaranteed by the individual or a member of the individual's immediate family, except for the following:

(i) Accounts payable;

(ii) Debts arising out of retail installment transactions;

(iii) Loans made by financial institutions in the ordinary course of business;

(iv) Loans from a relative; and

(v) Land contracts that have been properly recorded with the county clerk or the register of deeds;

(f) The name, address, and occupation or nature of business of any person from whom a gift in the value of more than one hundred dollars was received, a description of the gift and the circumstances of the gift, and the monetary value category of the gift, based on a good faith estimate by the individual, reported in the following categories:

(i) \$100.01 - \$200;

(ii) \$200.01 - \$500;

(iii) \$500.01 - \$1,000; and

(iv) \$1,000.01 or more; and

(g) Such other information as the individual or the commission deems necessary, after notice and hearing, to carry out the purposes of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 96; Laws 1980, LB 535, § 17; Laws 1993, LB 121, § 307; Laws 2000, LB 1021, § 8; Laws 2005, LB 242, § 37.

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.

49-1498 Members of a nonelective governmental body or of a committee or subcommittee of a governmental body; no financial interest in matters before body; exception.

Unless otherwise provided by law, the majority of the members of a nonelective governmental body, or of a committee or subcommittee of a governmental body, whether that body is elective or not, shall not have a financial interest, either personally or through a member of their immediate family or a business with which they are associated, other than an interest of a de minimis nature or an interest that is not distinct from that of the general public, in matters subject to the jurisdiction of the body or committee or subcommittee.

Source: Laws 1976, LB 987, § 98.

49-1499 Legislature; discharge of official duties; potential conflict; actions required.

(1) A member of the Legislature 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 if he or she will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(b) Deliver a copy of the statement to the commission and to the Speaker of the Legislature who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record.

(2) Nothing in this section shall prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the Legislature.

(3) The member of the Legislature may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists. He or she may have the reasons for the abstention recorded in the Legislative Journal.

Source: Laws 1976, LB 987, § 99; Laws 1981, LB 134, § 8; Laws 1992, LB 556, § 11; Laws 1995, LB 434, § 9; Laws 2001, LB 242, § 12; Laws 2005, LB 242, § 39.

49-1499.01 Repealed. Laws 2009, LB 322, § 6.

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.

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.

49-1499.04 Political subdivision; employment of family member; when; exception.

(1) An official or employee of a political subdivision may employ or recommend or supervise the employment of an immediate family member if (a) he or she does not abuse his or her official position as described in section 49-1499.05, (b) he or she makes a full disclosure on the record to the governing body of the political subdivision and a written disclosure to the person in charge of keeping records for the governing body, and (c) the governing body of the political subdivision approves the employment or supervisory position.

(2) No official or employee shall employ an immediate family member (a) without first having made a reasonable solicitation and consideration of applications for such employment, (b) who is not qualified for and able to perform the duties of the position, (c) for any unreasonably high salary, or (d) who is not required to perform the duties of the position.

(3) No official or employee of a political subdivision shall terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member.

(4) This section does not apply to an immediate family member of an official or employee who (a) was previously employed in a position subject to this section prior to the election or appointment of the official or employee or (b) was employed in a position subject to provisions similar to this section prior to September 1, 2001.

(5) Prior to, upon, or as soon as reasonably possible after the official date of taking office, a newly elected or appointed official or employee shall make a full disclosure of any immediate family member employed in a position subject to subdivision (4)(a) or (b) of this section.

Source: Laws 2001, LB 242, § 16; Laws 2005, LB 242, § 43.

49-1499.05 Official or employee; abuse of official position.

An official or employee shall not abuse his or her official position. Abuse of an official position includes, but is not limited to, employing an immediate family member (1) who is not qualified for and able to perform the duties of the position, (2) for any unreasonably high salary, or (3) who is not required to perform the duties of the position.

Source: Laws 2001, LB 242, § 17.

49-1499.06 Nebraska Environmental Trust Board; abstention; when.

Any member of the Nebraska Environmental Trust Board who is also a director of a state agency shall abstain from voting on applications pursuant to

the Nebraska Environmental Trust Act which would provide funding primarily to his or her agency.

Source: Laws 2002, LB 1003, § 36.

Cross References

Nebraska Environmental Trust Act, see section 81-15,167.

49-1499.07 Executive branch; nepotism prohibited; restrictions on supervisors; legislative intent for legislative branch and judicial branch.

(1) For purposes of this section:

(a) Family member means an individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption, of an official or employee in the executive branch of state government;

(b) Nepotism means the act of hiring, promoting, or advancing a family member in state government or recommending the hiring, promotion, or advancement of a family member in state government, including initial appointment and transfer to other positions in state government; and

(c) Supervisor means an individual having authority, in the interest of the state, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, responsibility to direct them or to adjust their grievances, or effectively to recommend any such action, if the exercise of such authority is not merely of a routine or clerical nature but requires the use of independent judgment.

(2) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not engage in nepotism.

(3) Except as authorized in subsection (5) of this section, an official or employee in the executive branch of state government shall not act as a supervisor to his or her family member.

(4) In addition to the other penalties authorized under the Nebraska Political Accountability and Disclosure Act, any person violating this section may be subject to disciplinary action.

(5)(a) The head of an agency may, upon a written showing of good cause, grant an exception to subsection (2) or (3) of this section. The written showing of good cause shall be filed with the commission and shall be considered a public record.

(b) An official or employee in the executive branch of state government who becomes a supervisor to his or her family member other than by means of nepotism shall notify the head of the agency within seven days of becoming aware of such situation and may continue to act as a supervisor until the head of the agency remedies the situation. The head of the agency shall act as soon as practicable.

(6) It is the intent of the Legislature that the legislative branch and the judicial branch of state government develop and implement internal policies prohibiting nepotism and the supervision of a family member.

Source: Laws 2009, LB322, § 2.

49-14,100 Advisory opinions; application; effect.

Any person who is in doubt as to the propriety of action proposed to be taken by him may apply to the commission for an advisory opinion relating thereto, and the commission shall have authority to render such opinions. When an advisory opinion is issued pursuant to a complete and accurate request, such opinion shall be a complete defense to any charge of violation of sections 49-1493 to 49-14,104 as to any action taken strictly subject to the terms of such opinion.

Source: Laws 1976, LB 987, § 100.

49-14,101 Public official, employee, candidate, and other individuals; prohibited acts; penalty.

(1) No person shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby:

- (a) A public official, public employee, or candidate;
- (b) A member of the immediate family of an individual listed in subdivision (a) of this subsection; or
- (c) A business with which an individual listed under subdivision (a) or (b) of this subsection is associated.

(2) No person listed in subsection (1) of this section shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

(3) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Source: Laws 1976, LB 987, § 101; Laws 1977, LB 41, § 55; Laws 1983, LB 370, § 22; Laws 1986, LB 548, § 14; Laws 1994, LB 1243, § 13; Laws 2001, LB 242, § 18.

This section has not been impliedly repealed by section 28-917. State v. Null, 247 Neb. 192, 526 N.W.2d 220 (1995).

49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty; permissible activities and uses.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) Unless otherwise restricted by an employment contract, a collective-bargaining agreement, or a written agreement or policy approved by a govern-

ment body, a public official or public employee may use a telecommunication system, a cellular telephone, an electronic handheld device, or a computer under the control of a government body for email, text messaging, a local call, or a long-distance call to a child at home, a teacher, a doctor, a day care center, a baby-sitter, a family member, or any other person to inform any such person of an unexpected schedule change or for other essential personal business. Any such communication shall be kept to a minimum and shall not interfere with the conduct of public business. A public official or public employee shall be responsible for payment or reimbursement of charges, if any, that directly result from any such communication. An agency or government body may establish procedures for reimbursement of charges pursuant to this subsection.

(4) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(6) This section does not prohibit the Executive Board of the Legislative Council from adopting policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Source: Laws 2001, LB 242, § 19; Laws 2002, LB 1086, § 4; Laws 2005, LB 242, § 44; Laws 2009, LB626, § 4.

49-14,101.02 Public official or public employee; use of public resources or funds; prohibited acts; exceptions.

(1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or 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.

(3) This section does not prohibit a public official or public employee from making government facilities available to a person for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the government facility available or a factor in determining the cost or conditions of use.

(4) This section does not prohibit a governing body from discussing and voting upon a resolution supporting or opposing a ballot question or a public corporation organized under Chapter 70 from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets.

(5) This section does not prohibit a public official or a public employee under the direct supervision of a public official from responding to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or from providing information in response to a request for information.

(6) This section does not prohibit a member of the Legislature from making use of public resources in expressing his or her opinion regarding a candidate or a ballot question or from communicating that opinion. A member is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of campaigning for or against the nomination or election of a candidate. A member is not authorized by this section to utilize mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question.

(7) This subsection applies to public officials other than members of the Legislature provided for in subsection (6) of this section. This section does not prohibit, in the normal course of his or her duties, a public official or a public employee under the direct supervision of a public official from using public resources to research and prepare materials to assist the government body for which the individual is a public official or public employee in determining the effect of the ballot question on the government body. This section does not authorize mass mailings, mass duplication, or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Mass communications shall not include placing public records demonstrating the consequences of the passage or defeat of a ballot question affecting the government body for which the individual is a public official or public employee on existing websites of such government body.

(8) Nothing in this section prohibits a public official from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used.

(9) Nothing in this section prohibits a public employee from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used. Except as otherwise provided in this section, a public employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate while on government work time or when otherwise engaged in his or her official duties.

(10) This section does not prohibit an employee of the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against the qualification, passage, or defeat of a ballot question if the employee is under the direction and supervision of a member of the Legislature.

(11) Nothing in this section prohibits a public official or public employee from identifying himself or herself by his or her official title.

Source: Laws 2001, LB 242, § 20; Laws 2005, LB 242, § 45; Laws 2009, LB626, § 5.

In order to determine whether there has been a violation of subsection (2) of this section, a court must consider the intent behind the expenditure of public resources. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

Public resources are used "for the purpose of campaigning" when their use is intended to influence public support for or

against a particular political candidate, ticket, or measure. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

The language of subsection (2) of this section does not make a distinction between express advocacy and issue advocacy. *Nebraska Account. & Disclosure Comm. v. Skinner*, 288 Neb. 804, 853 N.W.2d 1 (2014).

The filming of a city council member in his city office for the purpose of creating a video advertisement for his reelection campaign was not a "use" of resources in violation of this section. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

This section is penal in nature and must be strictly construed in the context of the object sought to be accomplished, the evils and mischiefs sought to be remedied, and the purpose sought to be served. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

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.

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 Contract; conflict of interest; voidable; decree.

(1) A contract involving a prohibited conflict of interest under section 49-14,102 shall be voidable only by decree of a court of proper jurisdiction in an action brought by any citizen of this state as to any person that entered into the contract or took assignment thereof, with actual knowledge of the prohibited conflict. In the case of a person other than an individual, the actual knowledge must be that of an individual or body finally approving the contract for the person.

(2) An action to void any contract shall be brought within one year after discovery of circumstances suggesting the existence of a violation.

(3) Any such decree voiding such contract may, to meet the ends of justice, 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 state or political subdivision has benefited thereby.

(4) Sections 49-14,102 and 49-14,103 shall not apply to a contract for labor which is negotiated or is being negotiated pursuant to the laws of this state.

Source: Laws 1976, LB 987, § 103; Laws 2005, LB 242, § 47.

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 payment, 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) 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.

(7) 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.

(8) Section 49-14,102 does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(9)(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; Laws 2021, LB65, § 1.
Effective date August 28, 2021.

Cross References

Nebraska Local Hospital District Act, see section 23-3528.

49-14,103.02 Contract with officer; information required; ledger maintained.

(1) The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1)(a) through (e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

- (a) Names of the contracting parties;
- (b) Nature of the interest of the officer in question;
- (c) Date that the contract was approved by the governing body;
- (d) Amount of the contract; and
- (e) Basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

Source: Laws 1986, LB 548, § 3; Laws 2001, LB 242, § 22; Laws 2005, LB 242, § 49.

49-14,103.03 Open account with officer; how treated.

(1) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 49-14,103.01 to 49-14,103.06.

(2) The statement required to be filed by section 49-14,103.02 shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account.

(3) Purchases made from petty cash or a petty cash fund shall not be subject to sections 49-14,103.01 to 49-14,103.06.

Source: Laws 1986, LB 548, § 4; Laws 2005, LB 242, § 50.

49-14,103.04 Violations; penalties.

(1) Any officer who knowingly violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class III misdemeanor.

(2) Any officer who negligently violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class V misdemeanor.

Source: Laws 1986, LB 548, § 5; Laws 2005, LB 242, § 51.

49-14,103.05 Governing body; prohibit certain contracts.

Notwithstanding sections 49-14,103.01 to 49-14,103.03, any governing body may prohibit contracts over a specific dollar amount in which an officer of such body may have an interest.

Source: Laws 1986, LB 548, § 6.

49-14,103.06 Governing body; exempt certain contracts.

Any governing body may exempt from sections 49-14,103.01 to 49-14,103.03 contracts involving one hundred dollars or less in which an officer of such body may have an interest.

Source: Laws 1986, LB 548, § 7.

49-14,103.07 Filing of potential conflict of interest statement not required; when.

Individuals required to make disclosures pursuant to section 49-1499.04 or sections 49-14,103.01 to 49-14,103.06 shall not be required to file potential conflict of interest statements pursuant to section 49-1499.03.

Source: Laws 1986, LB 548, § 8; Laws 2001, LB 242, § 23.

49-14,104 Official or full-time employee of executive branch; not to represent a person or act as an expert witness; when; violation; penalty.

(1) An official or full-time employee of the executive branch of state government shall not represent a person or act as an expert witness for compensation before a government body when the action or nonaction of the government body is of a nonministerial nature, except in a matter of public record in a court of law.

(2) This prohibition shall not apply to an official or employee acting in an official capacity.

(3) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 104; Laws 1977, LB 41, § 56; Laws 2005, LB 242, § 52.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,105 Nebraska Accountability and Disclosure Commission; established; members; appointment; procedure.

There is hereby established the Nebraska Accountability and Disclosure Commission. The commission shall be composed of nine members, including the Secretary of State. The eight appointed members shall be appointed, subject to the provisions of section 49-14,110, as follows:

(1) Four members shall be appointed by the Governor in the following manner:

(a) One member from each of two lists submitted by the Legislature. Each list shall contain at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111; and

(b) Two members from the citizenry of the state at large; and

(2) Four members shall be appointed by the Secretary of State in the following manner:

(a) One member from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the Democrat state chairperson;

(b) One member from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the Republican state chairperson; and

(c) Two members from the citizenry of the state at large.

Source: Laws 1976, LB 987, § 105; Laws 1979, LB 54, § 1; Laws 1990, LB 534, § 2.

49-14,106 Commission members; appointment.

The Governor and Secretary of State shall make their appointments in such a manner as to assure that not more than four of the eight appointed members of the commission shall be from the same political party and at least one member shall be registered as an independent and such person shall have been so registered for at least two years prior to his appointment. The appointments provided for in subdivisions (1)(a), (2)(a), and (2)(b) of section 49-14,105 shall be made prior to any other appointments. The appointment provided for in subdivision (1)(b) of section 49-14,105 shall precede the appointment provided for in subdivision (2)(c) of section 49-14,105.

Source: Laws 1976, LB 987, § 106; Laws 1979, LB 54, § 2.

49-14,107 Memberships on commission; increased; when; manner.

If a political party other than a legally recognized party shall receive at least five percent of the entire vote of the state at a general election, the membership of the commission shall be increased by one. The additional member shall be appointed by the Governor from a list of at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of section 49-14,111 submitted by the state chairperson of the political party receiving such five percent vote and shall be subject to confirmation by the Legislature in the same manner as the other appointed commissioners are selected and confirmed. If two or more of the individuals whose names appear on such list submitted to the Governor are unwilling to withdraw from activities or resign from positions as required by section 49-14,114, the Governor shall follow the procedure prescribed in section 49-14,112. Should any political party fail to poll at least five percent of the entire vote of the state at a general election, the

position of that party shall be terminated, except that any person serving as a member may serve to the end of that person's term.

Source: Laws 1976, LB 987, § 107; Laws 1990, LB 534, § 3.

49-14,108 Commission; members; file a statement of financial interests; when.

Each person appointed to the commission by the Governor or the Secretary of State shall file with the commission a statement of financial interests, pursuant to sections 49-1493 to 49-14,104, prior to assuming his or her duties or prior to the legislative confirmation hearing, whichever occurs first.

Source: Laws 1976, LB 987, § 108; Laws 1990, LB 534, § 4.

49-14,109 Legislative committee; conduct open hearings of persons appointed to the commission.

The appropriate legislative committee, to be determined under the rules of the Legislature, shall conduct open hearings with respect to the qualifications of each person appointed to the commission and submitted for approval by the Governor or the Secretary of State, and under no circumstances may such hearings be closed to the public. Hearings need not be held regarding a person who has, in a written letter to the Governor, withdrawn his or her name from consideration.

Source: Laws 1976, LB 987, § 109; Laws 1979, LB 54, § 3.

49-14,110 Commission; appointments; legislative approval.

All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in session. If the Legislature is not in session, any appointment shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

Source: Laws 1976, LB 987, § 110; Laws 1979, LB 54, § 4; Laws 1990, LB 534, § 5.

49-14,111 Commission; members; terms.

(1) The appointed members of the commission shall serve for terms of six years, except that, of the members first appointed:

(a) The Governor shall designate (i) one individual from a list submitted by the Legislature to serve a term of one year; (ii) the individual appointed at large to serve a term of three years; (iii) one individual from a list submitted by the Legislature to serve a term of five years; and (iv) an additional individual appointed at large to serve a term of six years; and

(b) The Secretary of State shall designate (i) the individual from the list submitted by the Democrat state chairperson to serve a term of two years; (ii) the individual appointed at large to serve a term of four years; (iii) the individual from the list submitted by the Republican state chairperson to serve a term of six years; and (iv) the additional individual appointed at large to serve a term of six years.

(2) All succeeding appointments to the commission shall be made in the same manner as the original appointments are made and succeeding appointees shall

have the same qualifications as their predecessors. Each such appointment shall be made in such a manner so that by succeeding appointments the appointed membership of the commission consists of not more than three members from any one congressional district.

Source: Laws 1976, LB 987, § 111; Laws 1979, LB 54, § 5.

49-14,112 Commission; members; vacancy; how filled.

(1) When a vacancy occurs by expiration of a term of office or otherwise, which vacancy is subject to an appointment from a list pursuant to the provisions of section 49-14,105, such list shall be submitted to the Governor or the Secretary of State not later than thirty days after such vacancy occurs.

(2) If the appointment is subject to a list pursuant to subdivision (1)(a) of section 49-14,105, and the Legislature is not in session, such list may be submitted by the Executive Board of the Legislative Council.

(3) The Governor or the Secretary of State shall make his or her appointment within thirty days of receiving the list provided for in section 49-14,105 unless two or more of the individuals whose names appear on the list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. If such individuals are unwilling to so withdraw or resign, the Governor or the Secretary of State shall notify the provider of the list. Within thirty days after such notification is received, a new list of names of at least five individuals shall be submitted to the Governor or Secretary of State. Such new list shall not include the individuals included in the initial list who were unwilling to withdraw from activities or resign from positions as required by section 49-14,114.

(4) The Governor or Secretary of State shall appoint an individual from the new list within thirty days of receipt unless two or more of the individuals whose names appear on the second list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. In such event, the Governor or Secretary of State shall appoint an individual of his or her own choosing within thirty days after the receipt of the new list.

(5) If the Governor or Secretary of State does not receive the initial list within thirty days of a vacancy, the Governor or Secretary of State may make an appointment of his or her own choosing. If the Governor or Secretary of State does not receive the second list within thirty days after notification to the provider of the list, the Governor or Secretary of State may make an appointment of his or her own choosing.

(6) All appointments of the Governor or Secretary of State shall be subject to sections 49-14,106 and 49-14,110 and subsection (2) of section 49-14,111.

(7) No individual appointed to the commission shall serve more than one full six-year term on the commission.

Source: Laws 1976, LB 987, § 112; Laws 1979, LB 54, § 6; Laws 1990, LB 534, § 6; Laws 2005, LB 242, § 53.

49-14,113 Individual appointed to fill a vacancy; term.

An individual appointed to fill a vacancy, occurring other than by the expiration of a term of office, shall be appointed for the unexpired term of the

member such individual succeeds and shall be eligible for appointment to one full six-year term thereafter.

Source: Laws 1976, LB 987, § 113; Laws 1991, LB 232, § 9.

49-14,114 Commission; appointed members; prohibited acts; resignation required; when.

(1) No appointed individual, while a member of the commission, shall engage in any activity or hold any position or office which is regulated by the commission as follows: (a) Lobbying; (b) being a public official, a public employee, or a state elective official; (c) campaigning for the election or appointment of himself or herself to an elective public office; or (d) holding an office in any political party or political committee.

(2) An appointed individual shall withdraw from any activity and resign from any position or office regulated by the commission prior to beginning his or her term on the commission.

(3) Nothing in this section shall be construed to limit an appointed individual's right to vote in any election or to limit his or her right to make contributions.

Source: Laws 1976, LB 987, § 114; Laws 1990, LB 534, § 7.

49-14,115 Member or employee of commission; confidential information; disclosure, when; violation; penalty.

No member or employee of the commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential by the Nebraska Political Accountability and Disclosure Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the act. Any member who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 115; Laws 1977, LB 41, § 57; Laws 2005, LB 242, § 54.

49-14,116 Commission; members; removal; procedure.

Members may be removed by the Governor for inefficiency, neglect of duty, misconduct in office, mental or physical disability, or for taking part in activities prohibited by section 49-14,114 or 49-14,115, but only after delivering to the member a copy of the charges and affording him an opportunity to be publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor.

Source: Laws 1976, LB 987, § 116.

49-14,117 Commission; officers; duties.

The commission shall organize by selecting a chairperson, a vice-chairperson, and a secretary from among its members, who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position. The secretary shall keep all records of meetings and actions taken by the commission.

Source: Laws 1976, LB 987, § 117.

49-14,118 Commission; quorum.

Five members of the commission shall constitute a quorum and the concurrence of five members of the commission shall be required for any action or recommendation of the commission or any sanction which may be imposed pursuant to section 49-14,126.

Source: Laws 1976, LB 987, § 118; Laws 1990, LB 534, § 8.

49-14,119 Commission; meetings; records; notice.

The commission shall meet at such times and places as shall be determined by the commission and shall keep a record of its proceedings. Special meetings may be called by the chairperson. Such special meetings shall be called by such chairperson upon receipt of a written request signed by three or more members of the commission. Written notice of the time and place of all meetings shall be mailed in advance to each member of the commission by the secretary.

Source: Laws 1976, LB 987, § 119.

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.

49-14,121 Commission; personnel; executive director; duties; assistance from other agencies; exempt from personnel system.

The commission shall employ an executive director and may employ a general counsel and such other staff as are necessary to carry out its duties pursuant to the Nebraska Political Accountability and Disclosure Act. The executive director shall serve at the pleasure of the commission and shall be solely responsible to it. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him or her by the commission, except that the commission shall not delegate the making of regulations to the executive director. The commission may obtain the services of experts and consultants as necessary to carry out its duties pursuant to the act. Unless prohibited by law, the Tax Commissioner, the Auditor of Public Accounts, the Attorney General, and the county attorneys shall make available to the commission such personnel, facilities, and other assistance as the commission may request. Members of the commission shall be exempted from the provisions of Chapter 81, article 13, except that they may be covered by the State Personnel System through specific agreement between the commission and the personnel division of the Department of Administrative Services.

Source: Laws 1976, LB 987, § 121; Laws 1980, LB 535, § 18; Laws 1983, LB 479, § 4; Laws 1992, Third Spec. Sess., LB 14, § 4.

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 cam-

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.

The Nebraska Accountability and Disclosure Commission is required to prescribe forms for statements and reports that are required to be filed under both the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation

Act and furnish such forms to persons required to file such statements and reports, as well as to distribute these forms to the appropriate local officials. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-14,123.01 Commission; duty to provide information.

The commission shall provide copies of statements, reports, parts of reports, advisory opinions, and public information prepared by the commission to any person on request at a reasonable cost to be determined by the commission.

Source: Laws 1989, LB 815, § 3.

49-14,123.02 Repealed. Laws 2005, LB 242, § 70.

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.

49-14,127 Mandamus to compel civil action; when.

Any individual who believes that a violation of the Nebraska Political Accountability and Disclosure Act has occurred may, after exhausting the administrative remedies provided by the act, bring a civil action to compel the commission to fulfill its responsibilities under the act, or may bring a civil action against any person or persons to compel compliance with the act.

Source: Laws 1976, LB 987, § 127; Laws 2005, LB 242, § 60.

49-14,128 Reasonable attorney's fees; court order.

The court may order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought pursuant to section 49-14,127. If the court finds that an action was brought without reasonable cause, the court may order the plaintiff to pay reasonable attorney fees and court costs incurred by the defendant.

Source: Laws 1976, LB 987, § 128.

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.

49-14,130 Repealed. Laws 2005, LB 242, § 70.

49-14,131 Appeal; procedure.

Any final decision by the commission in a contested case or a declaratory ruling made pursuant to the Nebraska Political Accountability and Disclosure Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 987, § 131; Laws 1988, LB 352, § 91; Laws 1991, LB 232, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

Advisory opinions of the Nebraska Accountability and Disclosure Commission are not the equivalent of either of the matters appealable to the district court in accordance with the Administrative Procedure Act identified in this section, to wit, contested

cases or declaratory rulings, and therefore are not appealable under this section. *Engler v. State*, 283 Neb. 985, 814 N.W.2d 387 (2012).

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.

Prohibition by this section of use of public information for “other political campaign purposes”, as applied in this case, placed an impermissible burden on protected speech and is struck down for being overbroad. Provision in this statute which

prohibits use of information for harassment purposes is held to be so vague as to be constitutionally infirm and is therefore struck down. *Fowler v. Neb. Account. and Disclosure Comm.*, 213 Neb. 462, 330 N.W.2d 136 (1983).

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.

49-14,134 False statement or report; unlawful; penalty.

In addition to penalties otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who files a statement or report required under the act knowing that information contained in the statement or report is false or that the verification statement required on the document is false shall be guilty of a Class IV felony.

Source: Laws 1976, LB 987, § 134; Laws 1977, LB 41, § 58; Laws 1999, LB 581, § 4.

49-14,135 Violation of confidentiality; perjury; penalty.

(1) Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who violates the confidentiality of a commission proceeding pursuant to the act shall be guilty of a Class III misdemeanor.

(2) A person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to the act shall be guilty of a Class IV felony.

Source: Laws 1976, LB 987, § 135; Laws 1977, LB 41, § 59; Laws 2005, LB 242, § 62.

49-14,136 Statute of limitations.

Prosecution for violation of the Nebraska Political Accountability and Disclosure Act shall be commenced within three years after the date on which the violation occurred.

Source: Laws 1976, LB 987, § 136; Laws 2005, LB 242, § 63.

49-14,137 Discipline of public officials or employees; effect of act.

The penalties prescribed in the Nebraska Political Accountability and Disclosure Act do not limit the power of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

Source: Laws 1976, LB 987, § 137; Laws 2005, LB 242, § 64.

49-14,138 Local laws of political subdivisions; effect of act.

No political subdivision or municipality within the State of Nebraska in which candidates for their elective offices or elected officials are subject to the requirements of the Nebraska Political Accountability and Disclosure Act shall require compliance with local provisions governing campaign receipts and expenditures or financial disclosures which are different from those established by the act.

Source: Laws 1976, LB 987, § 138; Laws 2005, LB 242, § 65.

49-14,139 Forms; distribution.

The county clerk or election commissioner in each county shall distribute forms prepared by the commission to any person required to file any statement or report pursuant to the Nebraska Political Accountability and Disclosure Act other than forms or statements under sections 49-1480 to 49-1492.01. Such forms shall include, but not be limited to, filing forms and instructions, statements of financial interest, and campaign committee organization forms.

Source: Laws 1983, LB 479, § 6; Laws 2005, LB 242, § 66.

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

website 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 website 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.
- 49-1507. Repealed. Laws 2012, LB 1113, § 50.
- 49-1508. Repealed. Laws 2012, LB 1113, § 50.

Section
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.
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49-1561. Repealed. Laws 2012, LB 1113, § 50.
49-1562. Repealed. Laws 2012, LB 1113, § 50.

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.
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- 49-1516 Repealed. Laws 2012, LB 1113, § 50.
- 49-1517 Repealed. Laws 2012, LB 1113, § 50.
- 49-1518 Repealed. Laws 2012, LB 1113, § 50.
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- 49-1533 Repealed. Laws 2012, LB 1113, § 50.
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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 16

NEBRASKA CONSTITUTIONAL REVISION COMMISSION

Section
49-1601. Repealed. Laws 2000, LB 887, § 1.

Section

49-1602. Repealed. Laws 2000, LB 887, § 1.

49-1603. Repealed. Laws 2000, LB 887, § 1.

49-1601 Repealed. Laws 2000, LB 887, § 1.

49-1602 Repealed. Laws 2000, LB 887, § 1.

49-1603 Repealed. Laws 2000, LB 887, § 1.

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 website;

(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:

LEGISLATURE

**CHAPTER 50
LEGISLATURE**

Article.

1. General Provisions. 50-101 to 50-130.
2. Expenses. 50-201 to 50-203.
3. Next Generation Business Growth Act. 50-301 to 50-306.
4. Legislative Council. 50-401 to 50-450.
5. Bioscience Steering Committee. 50-501 to 50-508.
6. Whiteclay Public Health Emergency Task Force. 50-601 to 50-603.
7. Mental Health Crisis Hotline Task Force. 50-701.
8. Water Resources. 50-801, 50-802.
9. Retirement. Repealed.
10. Youth Leadership Academy. Repealed.
11. Legislative Districts. 50-1101 to 50-1154.
12. Legislative Performance Audit Act. 50-1201 to 50-1215.
13. Review of Boards and Commissions. 50-1301 to 50-1304.
14. Legislature's Planning Committee. 50-1401 to 50-1404.
15. Legislative Qualifications and Election Contests Act. 50-1501 to 50-1520.

ARTICLE 1

GENERAL PROVISIONS

Section

- | | |
|------------|---|
| 50-101. | Members; credentials; filing; officers pro tempore. |
| 50-102. | Members; credentials committee; report; when waived. |
| 50-103. | Oaths; members may administer. |
| 50-104. | Speech; legislative privilege. |
| 50-105. | Contempt, defined; punishment. |
| 50-106. | Contempt; imprisonment; maximum sentence. |
| 50-107. | Contempt; maximum fine. |
| 50-108. | Contempt; fines and imprisonment; how effected. |
| 50-109. | Contempt; fines; collection. |
| 50-110. | Contempt; punishment; effect on other proceedings. |
| 50-111. | Legislature; officers; how selected. |
| 50-112. | Officers and employees; salaries; how fixed. |
| 50-112.01. | Repealed. Laws 1959, c. 266, § 1. |
| 50-112.02. | Repealed. Laws 1961, c. 286, § 1. |
| 50-113. | Presiding officer; duties. |
| 50-114. | Clerk; duties. |
| 50-114.01. | Clerk; daily journal; prepare; compile after session. |
| 50-114.02. | Clerk; charges; authorized. |
| 50-114.03. | Clerk; reports; list; distribution; establish requirements for reports. |
| 50-114.04. | Clerk; reports; period retained. |
| 50-114.05. | Clerk of the Legislature Cash Fund; created; use; investment. |
| 50-115. | Assistant clerk; duties. |
| 50-116. | Sergeant at arms; duties; display of state banner. |
| 50-117. | Repealed. Laws 1999, LB 10, § 1. |
| 50-118. | Repealed. Laws 1986, LB 993, § 1. |
| 50-119. | Repealed. Laws 1967, c. 328, § 14. |
| 50-120. | Repealed. Laws 1973, LB 82, § 2. |
| 50-121. | Repealed. Laws 1973, LB 82, § 2. |
| 50-122. | Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3. |
| 50-123. | Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3. |
| 50-123.01. | Members; salary. |

Section

- 50-123.02. Repealed. Laws 1963, c. 341, § 1.
- 50-123.03. Repealed. Laws 1971, LB 33, § 1.
- 50-124. Repealed. Laws 1971, LB 33, § 1.
- 50-125. Legislature; special session; how convened; notice.
- 50-126. Legislature; convening; failure of Secretary of State or Governor to act; penalty.
- 50-127. Repealed. Laws 1986, LB 993, § 1.
- 50-128. Legislature; make appropriations.
- 50-129. Repealed. Laws 1998, LB 902, § 1.
- 50-130. Repealed. Laws 1998, LB 902, § 1.

50-101 Members; credentials; filing; officers pro tempore.

The Clerk of the Legislature shall file the certificates presented by members, and make a roll of the members who thus appear to be elected. The persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being.

Source: R.S.1866, c. 31, § 3, p. 249; R.S.1913, § 3742; C.S.1922, § 3135; C.S.1929, § 50-101; R.S.1943, § 50-101.

50-102 Members; credentials committee; report; when waived.

(1) When the Legislature is temporarily organized it shall elect a committee of five by ballot, which committee shall examine and report upon the credentials of those claiming to be elected members, and, when such report is made, those reported as elected shall proceed to the permanent organization of the Legislature. The Legislature shall be the sole judge of the election returns and qualifications of its own members.

(2) The Legislature may waive the requirements set forth in subsection (1) of this section whenever it is reasonably apparent to the members of the Legislature that there is not, or is not likely to be, a contest of any election result. If the provisions of subsection (1) are waived, the Legislature may, by rule, provide for the certification of members elected to the Legislature.

Source: R.S.1866, c. 31, § 4, p. 249; R.S.1913, § 3743; C.S.1922, § 3136; C.S.1929, § 50-102; R.S.1943, § 50-102; Laws 1977, LB 231, § 1.

50-103 Oaths; members may administer.

Any member may administer oaths in the Legislature, and while acting on a committee may administer oaths on the business of such committee.

Source: R.S.1866, c. 31, § 5, p. 249; R.S.1913, § 3744; C.S.1922, § 3137; C.S.1929, § 50-103; R.S.1943, § 50-103.

Although this section provides that any member of the Legislature "May administer oaths in the Legislature, and while acting on a committee may administer oaths on the business of such committee" no Nebraska statute requires that an oath be administered to individuals testifying before a legislative committee. *State v. Douglas*, 222 Neb. 833, 388 N.W.2d 801 (1986).

50-104 Speech; legislative privilege.

No member of the Legislature shall be questioned in any other place for any speech or words spoken in debate in the Legislature.

Source: R.S.1866, c. 31, § 6, p. 249; R.S.1913, § 3745; C.S.1922, § 3138; C.S.1929, § 50-104; R.S.1943, § 50-104.

50-105 Contempt, defined; punishment.

The Legislature has power and authority to punish as a contempt by fine or imprisonment, or either of them, the offense of knowingly arresting a member in violation of his privilege; of assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done as a member thereof; of attempting, by menace or other corrupt means, to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct tending to disturb its proceedings; of refusing to attend or to be sworn or to be examined as a witness before the Legislature or a committee, when duly summoned; of assaulting or preventing any person going to the Legislature, or its committee, by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of the Legislature, knowing of such arrest; and of knowingly injuring any officer of the Legislature in the discharge of his duties as such.

Source: R.S.1866, c. 31, § 7, p. 250; R.S.1913, § 3746; C.S.1922, § 3139; C.S.1929, § 50-105; R.S.1943, § 50-105.

Although this section authorizes the Legislature to hold in contempt a person refusing to be sworn, when required by a committee of the Legislature pursuant to a rule of the Nebraska Unicameral, the statute does not explicitly require an oath to be administered to persons testifying before a committee. *State v. Douglas*, 222 Neb. 833, 388 N.W.2d 801 (1986).

50-106 Contempt; imprisonment; maximum sentence.

Imprisonment for contempt of the Legislature shall not be for more than six hours, and shall be in the jail of the county in which the Legislature may be sitting.

Source: R.S.1866, c. 31, § 8, p. 250; R.S.1913, § 3747; C.S.1922, § 3140; C.S.1929, § 50-106; R.S.1943, § 50-106.

50-107 Contempt; maximum fine.

Should a fine be imposed for any offense mentioned in section 50-105, it shall not exceed fifty dollars.

Source: R.S.1866, c. 31, § 9, p. 250; R.S.1913, § 3748; C.S.1922, § 3141; C.S.1929, § 50-107; R.S.1943, § 50-107.

50-108 Contempt; fines and imprisonment; how effected.

Fines and imprisonment shall be only by virtue of an order of the Legislature, entered on its journal stating the grounds therefor. Imprisonment shall be effected by a warrant, under the hand of the presiding officer for the time being, countersigned by the Clerk of the Legislature, running in the name of the state and directed to the sheriff of the proper county. Under such warrant, the officer of the Legislature, sheriff, and jailer will be authorized to arrest and detain the person.

Source: R.S.1866, c. 31, § 10, p. 250; R.S.1913, § 3749; C.S.1922, § 3142; C.S.1929, § 50-108; R.S.1943, § 50-108.

50-109 Contempt; fines; collection.

Fines shall be collected by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the state treasury.

Source: R.S.1866, c. 31, § 11, p. 250; R.S.1913, § 3750; C.S.1922, § 3143; C.S.1929, § 50-109; R.S.1943, § 50-109.

50-110 Contempt; punishment; effect on other proceedings.

Punishment for contempt, as provided in sections 50-105 to 50-109, is no bar to any other proceedings, civil or criminal, for the same offense.

Source: R.S.1866, c. 31, § 12, p. 251; R.S.1913, § 3751; C.S.1922, § 3144; C.S.1929, § 50-110; R.S.1943, § 50-110.

50-111 Legislature; officers; how selected.

The officers of the Legislature shall consist of a speaker, chief clerk, assistant clerk, sergeant at arms, and such other officers as may be deemed necessary for the proper transaction of business, to be elected by the Legislature upon the recommendation of the Executive Board of the Legislative Council, except that the board shall make no recommendation as to the speaker.

Source: Laws 1867, § 2, p. 85; Laws 1885, c. 61, § 2, p. 274; Laws 1889, c. 86, § 1, p. 572; R.S.1913, § 3753; C.S.1922, § 3146; C.S.1929, § 50-112; R.S.1943, § 50-111; Laws 1963, c. 304, § 1, p. 900; Laws 1967, c. 328, § 6, p. 870; Laws 1971, LB 37, § 1; Laws 1973, LB 485, § 1.

50-112 Officers and employees; salaries; how fixed.

There shall be paid to each of the several officers, except the speaker, named in section 50-111 for their official services such salaries as shall be fixed by the Executive Board of the Legislative Council, unless otherwise directed by the Legislature.

Source: Laws 1867, § 3, p. 85; R.S.1913, § 3754; Laws 1919, c. 118, § 1, p. 283; C.S.1922, § 3147; C.S.1929, § 50-113; Laws 1937, c. 116, § 1, p. 418; C.S.Supp.,1941, § 50-113; R.S.1943, § 50-112; Laws 1945, c. 120, § 1, p. 396; Laws 1947, c. 346, § 1, p. 1091; Laws 1951, c. 338, § 1, p. 1116; Laws 1953, c. 358, § 1, p. 1136; Laws 1955, c. 198, § 1, p. 563; Laws 1957, c. 220, § 1, p. 759; Laws 1959, c. 241, § 1, p. 829; Laws 1959, c. 425, § 2, p. 1428; Laws 1963, c. 304, § 2, p. 900; Laws 1967, c. 328, § 7, p. 871; Laws 1973, LB 82, § 1; Laws 1973, LB 485, § 2.

If additional employees of Legislature are desired, statute must be so framed as to authorize their employment. State ex rel. Squires v. Wallich, 14 Neb. 439, 16 N.W. 481 (1883).

50-112.01 Repealed. Laws 1959, c. 266, § 1.**50-112.02 Repealed. Laws 1961, c. 286, § 1.****50-113 Presiding officer; duties.**

It shall be the duty of the presiding officer of the Legislature to preside over the Legislature, to keep and maintain order during the session thereof, and to do and perform the duties devolving on him by general parliamentary usage, and the rules adopted by the Legislature.

Source: Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-113.

50-114 Clerk; duties.

It shall be the duty of the Clerk of the Legislature to attend the sessions of the Legislature, to call the roll, read the journals, bills, memorials, resolutions, petitions, and all other papers or documents necessary to be read in the Legislature, to keep a correct journal of the proceedings in the Legislature, and to do and perform such other duties as may be imposed upon him by the Legislature or by the Executive Board of the Legislative Council.

Source: Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-114; Laws 1967, c. 328, § 8, p. 871.

Entries found in legislative journals prevail over evidence furnished by enrolled bill. *Webster v. City of Hastings*, 59 Neb. 563, 81 N.W. 510 (1900).

Enrolled bill and journals of houses are the official records relative to enactment of law and are the only competent evidence. *State v. Abbott*, 59 Neb. 106, 80 N.W. 499 (1899).

50-114.01 Clerk; daily journal; prepare; compile after session.

The Clerk of the Legislature shall prepare a daily journal of the proceedings of the Legislature. The Legislative Journal shall be compiled by the clerk after each regular session of the Legislature.

Source: Laws 1973, LB 84, § 1; Laws 1976, LB 718, § 1.

50-114.02 Clerk; charges; authorized.

The Clerk of the Legislature shall be authorized to make such charges, subject to the approval of the Executive Board of the Legislative Council, to recover costs and expenses of (1) copying files and records in the clerk's possession, (2) preparing certificates, (3) handling and mailing individual bills and bill subscriptions, and (4) such publications as may be authorized by the Legislature or the Executive Board of the Legislative Council.

Source: Laws 1977, LB 231, § 2.

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.

50-114.04 Clerk; reports; period retained.

The Clerk of the Legislature shall retain the reports received from state agencies, boards, and commissions for three years after the date of receipt of such reports after which time the clerk may dispose of such reports.

Source: Laws 1979, LB 322, § 81.

50-114.05 Clerk of the Legislature Cash Fund; created; use; investment.

The Clerk of the Legislature Cash Fund is hereby created. The fund shall consist of funds received by the Clerk of the Legislature pursuant to sections 49-1480.01 and 49-1482. The fund shall be used by the Clerk of the Legislature to perform the duties required by sections 49-1480 to 49-1492.01, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Clerk of the Legislature 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 1994, LB 872, § 14; Laws 1994, LB 1243, § 16; Laws 1995, LB 7, § 53; Laws 2005, LB 242, § 67; Laws 2009, First Spec. Sess., LB3, § 26.

Cross References

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

50-115 Assistant clerk; duties.

The assistant clerk shall be under the control and direction of the Clerk of the Legislature, and shall assist him in the proper discharge of his duties, and shall do and perform such other service as may be directed by the Legislature or by the Executive Board of the Legislative Council.

Source: Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-115; Laws 1967, c. 328, § 9, p. 871.

50-116 Sergeant at arms; duties; display of state banner.

It shall be the duty of the sergeant at arms to enforce the attendance of absent members, when directed properly so to do; to arrest all members or other persons, when lawfully authorized so to do; to keep and preserve order during the sessions of the Legislature; to convey to the post office the mail matter sent by the respective members, and to receive from such office the mail matter for such members, and to deliver the same to them on each morning of the session; to obey and enforce the orders of the presiding officers of the Legislature; and to do and perform such other duties as may be enjoined on him by law and the Legislature. It shall also be the duty of the sergeant at arms to procure a banner of the State of Nebraska, as described in section 90-102, and to place the same on top of the State Capitol building, there to be kept during the time the Legislature shall be in session. The colors of the banner shall be fast colors and the cloth shall be of substantial material. The banner shall be so arranged on the staff or pole that it may be raised or lowered with ease.

Source: Laws 1867, § 4, p. 85; R.S.1913, § 3755; C.S.1922, § 3148; C.S.1929, § 50-114; Laws 1941, c. 101, § 1, p. 418; C.S.Supp.,1941, § 50-114; R.S.1943, § 50-116; Laws 1963, c. 305, § 1, p. 901.

50-117 Repealed. Laws 1999, LB 10, § 1.**50-118 Repealed. Laws 1986, LB 993, § 1.**

50-119 Repealed. Laws 1967, c. 328, § 14.

50-120 Repealed. Laws 1973, LB 82, § 2.

50-121 Repealed. Laws 1973, LB 82, § 2.

50-122 Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3.

50-123 Repealed. Laws 1960, Seventy-first Spec. Sess., c. 1, § 3.

50-123.01 Members; salary.

Each member of the Legislature shall receive a salary in an amount equal to the maximum authorized by the Constitution of Nebraska. Such salary shall be paid in equal monthly installments.

Source: Laws 1960, Seventy-first Spec. Sess., c. 1, § 1, p. 59; Laws 1968, Seventy-ninth Spec. Sess., c. 2, § 1, p. 3251; Laws 1988, First Spec. Sess., LB 1, § 1.

50-123.02 Repealed. Laws 1963, c. 341, § 1.

50-123.03 Repealed. Laws 1971, LB 33, § 1.

50-124 Repealed. Laws 1971, LB 33, § 1.

50-125 Legislature; special session; how convened; notice.

Whenever ten or more members of the Legislature shall lodge with the Secretary of State a positive statement in writing, over their signatures respectively, setting forth the purpose or purposes for which said Legislature is convened, requesting that the Legislature meet in special session, personally delivered or transmitted by either registered or certified mail, return card requested, the Secretary of State shall forthwith certify to each of the other members of the Legislature, transmitted by either registered or certified mail, return card requested, the fact that ten or more members have lodged such statements with him and the object or objects of calling such session. If within ten days thereafter an additional number of the members of the Legislature, sufficient to make two-thirds or more, shall lodge statements in like manner as aforementioned with the Secretary of State, requesting that the Legislature meet in special session, the Secretary of State shall forthwith certify to the Governor the fact that two-thirds or more of said members have lodged said statements with him and the object or objects of calling such session. Thereupon the Governor shall, by proclamation, stating therein the purpose or purposes for which it is called, convene the Legislature to meet in special session within five days after receipt of said certificate from the Secretary of State. The Legislature shall enter upon no business except that for which it was called together.

Source: Laws 1937, c. 117, § 2, p. 419; C.S.Supp.,1941, § 50-118; R.S. 1943, § 50-125; Laws 1957, c. 242, § 42, p. 854; Laws 1969, c. 430, § 1, p. 1452.

50-126 Legislature; convening; failure of Secretary of State or Governor to act; penalty.

Any Secretary of State or any Governor who shall refuse or neglect punctually to perform the duties enjoined upon them or either of them, by section

50-125, shall be deemed guilty of an act of malfeasance which works a forfeiture of office. Upon complaint of any legislator or elector of the state the Attorney General shall forthwith file an information in quo warranto against said officer as an original action in the Supreme Court of the state, without bond for costs. If it shall appear from the showing made that the officer so offending failed punctually to perform said duties, or any of them, a judgment shall be rendered that said officer so offending be ousted, and also that he pay the costs of the proceeding.

Source: Laws 1937, c. 117, § 3, p. 420; C.S.Supp.,1941, § 50-119; R.S. 1943, § 50-126.

50-127 Repealed. Laws 1986, LB 993, § 1.

50-128 Legislature; make appropriations.

Beginning in 1987, the Legislature shall make appropriations for the expenses of state government during the regular session held in each odd-numbered year for the biennium beginning July 1 of such year and ending June 30 of the next succeeding odd-numbered year.

Source: Laws 1986, LB 258, § 1.

50-129 Repealed. Laws 1998, LB 902, § 1.

50-130 Repealed. Laws 1998, LB 902, § 1.

ARTICLE 2

EXPENSES

Section

50-201. Legislative findings.

50-202. Members; expenses allowed; when.

50-203. Expenses; Executive Board of the Legislative Council; powers and duties.

50-201 Legislative findings.

The Legislature hereby finds and declares (1) that the Constitution of Nebraska, by expressly providing for the legislative branch of government, implies the powers and the duty to provide the means, accessories, and instrumentalities to carry into effect the purposes for which the Legislature was created, (2) that items in the nature of expenses incidental to holding the office are not pay or perquisites within the meaning of Article III, section 7 of the Constitution of Nebraska, and (3) that the Constitution of Nebraska is construed to allow expenses to members of the Legislature, incidental to the performance of their duties as members of the Legislature, without contravening any constitutional provision as to pay, perquisites, or compensation.

Source: Laws 1981, LB 206, § 1.

Sections 50-201 and 50-202 are not in conflict with Article III, section 7, of the Nebraska Constitution. State ex rel. Douglas v. Beermann, 216 Neb. 849, 347 N.W.2d 297 (1984).

50-202 Members; expenses allowed; when.

Each member of the Legislature shall be allowed necessary expenses incurred while performing in the official capacity as a member of the Legislature.

Source: Laws 1981, LB 206, § 2.

Pursuant to Article III, section 7, of the Constitution of Nebraska and this section, the Legislature was authorized to adopt a policy which would reimburse the members of the Legislature for actual expenses they paid or incurred while performing their duties. *Jaksha v. Thomas*, 243 Neb. 794, 502 N.W.2d 827 (1993).

Sections 50-201 and 50-202 are not in conflict with Article III, section 7, of the Nebraska Constitution. *State ex rel. Douglas v. Beermann*, 216 Neb. 849, 347 N.W.2d 297 (1984).

50-203 Expenses; Executive Board of the Legislative Council; powers and duties.

The Executive Board of the Legislative Council shall adopt policies to carry out section 50-202. The policies shall allow each member of the Legislature to receive per diem expenses based upon ordinary and necessary business expenses as permitted by section 162 of the Internal Revenue Code which are incurred while performing in the official capacity as a member of the Legislature. The per diem expenses paid to a member shall be less than or equal to the amounts actually paid or incurred.

Source: Laws 1995, LB 508, § 1.

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. Legislative Council; members; functions.
- 50-401.01. Legislative Council; executive board; members; selection; powers and duties.
- 50-401.02. Repealed. Laws 1986, LB 993, § 1.
- 50-401.03. Repealed. Laws 1986, LB 993, § 1.
- 50-401.04. Repealed. Laws 1995, LB 509, § 8.
- 50-401.05. Executive Board of the Legislative Council; policy regarding telephones and telefax machines; authorized.
- 50-402. Legislative Council; office; duties.
- 50-403. Repealed. Laws 1992, LB 898, § 5.
- 50-404. Legislative Council; executive board; special committees; civil or criminal actions; exempt; when.

LEGISLATIVE COUNCIL

- Section
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.
50-409. Legislative Council; state and local governments; cooperation.
50-410. Legislative Council; meetings; quorum.
50-411. Legislative Council; message from Governor.
50-412. Legislative Council; library facilities; receipt and use of funds.
50-413. Legislative Council; minutes of meetings; reports.
50-414. Legislative Council; recommendations; publication.
50-415. Legislative Council; members; employees; expenses.
50-416. Legislative Research; Director of Research.
50-416.01. Nebraska Retirement Systems Committee; members.
50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
50-417.01. Repealed. Laws 2006, LB 1019, § 23.
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.
50-418. Legislative Fiscal Analyst; office established; personnel; Appropriations Committee; duties.
50-419. Fiscal analyst; powers and duties.
50-419.01. Legislative Fiscal Analyst; present evaluation of state operations; when.
50-419.02. Legislative Fiscal Analyst; revenue volatility report; contents.
50-419.03. Long-term fiscal trends; legislative findings and declarations.
50-420. Fiscal analyst; officer, board, commission, and department of state government; furnish information.
50-421. Office of Legislative Audit; Legislative Auditor.
50-422. Repealed. Laws 2012, LB 782, § 253.
50-423. Transferred to section 81-126.
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.
50-436. Repealed. Laws 1984, LB 637, § 1.
50-437. Nebraska Legislative Shared Information System Cash Fund; created; investment.
50-438. Legislative Council Retirement Study Fund; created; use; transfers; investment.
50-439. Repealed. Laws 2000, LB 890, § 1.
50-440. Repealed. Laws 2000, LB 890, § 1.

Section	
50-441.	Repealed. Laws 2000, LB 890, § 1.
50-442.	Repealed. Laws 2000, LB 890, § 1.
50-443.	Repealed. Laws 1999, LB 11, § 1.
50-444.	Repealed. Laws 2012, LB 706, § 1.
50-445.	State-Tribal Relations Committee; members.
50-446.	Corporate farming and ranching court rulings; legislative findings.
50-447.	Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.
50-448.	Attorney General; duties; powers.
50-449.	Youth Rehabilitation and Treatment Center-Geneva; legislative findings.
50-450.	Youth Rehabilitation and Treatment Center Special Oversight Committee of the Legislature; members; staff; powers and duties; termination.

50-401 Legislative Council; members; functions.

There is hereby created a Legislative Council, hereinafter referred to as council, which shall consist of all of the members of the Legislature. It shall be the function of the Legislative Council to consider legislative policies between sessions of the Legislature and carry out the duties imposed by section 50-402.

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. 413; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(1), p. 444.

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, LB 711, § 1.

50-401.02 Repealed. Laws 1986, LB 993, § 1.

50-401.03 Repealed. Laws 1986, LB 993, § 1.

50-401.04 Repealed. Laws 1995, LB 509, § 8.

50-401.05 Executive Board of the Legislative Council; policy regarding telephones and telefax machines; authorized.

The Executive Board of the Legislative Council may adopt policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

Source: Laws 1994, LB 1243, § 1.

50-402 Legislative Council; office; duties.

The Legislative Council shall occupy and maintain offices in the State Capitol.

It shall be the duty of the council:

(1) To collect information concerning the government and general welfare of the state;

(2) To examine the effects of previously enacted statutes and recommend amendments thereto;

(3) To deal with important issues of public policy and questions of statewide interest;

(4) To prepare a legislative program in the form of bills or otherwise as in its opinion the welfare of the state may require, to be presented at the next session of the Legislature;

(5) To study federal aid to the state and its political subdivisions and advise the Legislature of money, land, or buildings available from the federal government, matching funds necessary, grants and aids, and what new legislation will be needed;

(6) To establish and maintain a complete and efficient bill drafting service for the purpose of aiding and assisting members of the Legislature and the executive departments of the state in the preparation of bills, resolutions, and measures and in drafting the same in proper form, and for this purpose there shall be assigned to the council for such work, rooms in the State Capitol conveniently situated in reference to the legislative chamber;

(7) To provide, through the Revisor of Statutes, for the publication of supplements and replacement volumes of the statutes of Nebraska; and

(8) To set up subcommittees within the executive board to carry out functions such as investigation of any area which it may decide is in the public interest with power to employ such additional personnel as may be needed to carry out the intent and activities of the executive board or the Legislature.

Source: Laws 1937, c. 118, § 2, p. 422; Laws 1939, c. 60, § 2, p. 261; C.S.Supp.,1941, § 50-502; R.S.1943, § 50-402; Laws 1965, c. 311, § 1, p. 873; Laws 1965, c. 312, § 1, p. 874; Laws 1967, c. 328, § 11, p. 872; Laws 1972, LB 1129, § 2; Laws 1992, LB 898, § 2.

50-403 Repealed. Laws 1992, LB 898, § 5.

50-404 Legislative Council; executive board; special committees; civil or criminal actions; exempt; when.

The executive board shall have power and authority to appoint committees of the Legislative Council and assign subjects to them for study and reports. No member of the Legislature shall be liable in any civil or criminal action whatever for words spoken at an authorized committee meeting when conducting an investigation authorized by the executive board or for words spoken at meetings of standing or special committees of the Legislature.

Source: Laws 1937, c. 118, § 2, p. 422; Laws 1939, c. 60, § 2, p. 262; C.S.Supp.,1941, § 50-502; R.S.1943, § 50-404; Laws 1949, c. 168, § 2, p. 445; Laws 1973, LB 485, § 4.

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.

A subpoena issued during one biennium legislative term automatically expires with the expiration of the Legislature in which the investigation began. *State ex rel. Peterson v. Ebke*, 303 Neb. 637, 930 N.W.2d 551 (2019).

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.

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.

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.

50-409 Legislative Council; state and local governments; cooperation.

Each officer, board, commission or department of state government or any local government shall make such studies for and furnish information to the council as it may require and as can be made within the limits of its appropriation.

Source: Laws 1937, c. 118, § 5, p. 423; C.S.Supp.,1941, § 50-505; R.S. 1943, § 50-409.

50-410 Legislative Council; meetings; quorum.

The council shall meet at least once in each biennium. One meeting of the entire council shall be held at the call of the chairman not less than thirty nor more than sixty days prior to the next regular session of the Legislature.

Twenty-five members shall constitute a quorum, but a smaller number may meet and may compel the attendance of members in order to secure a quorum.

Source: Laws 1937, c. 118, § 6, p. 423; C.S.Supp.,1941, § 50-506; R.S. 1943, § 50-410; Laws 1949, c. 168, § 6, p. 446; Laws 1951, c. 169, § 2, p. 655; Laws 1965, c. 314, § 1, p. 876; Laws 1969, c. 430, § 2, p. 1453.

50-411 Legislative Council; message from Governor.

The Governor shall have the right to send a message to the session of the council convening next after the adjournment of each session of the Legislature, and may, from time to time, send additional messages containing his recommendations and explaining the policy of the administration.

Source: Laws 1937, c. 118, § 7, p. 423; C.S.Supp.,1941, § 50-507; R.S. 1943, § 50-411.

50-412 Legislative Council; library facilities; receipt and use of funds.

The Legislative Council and Legislature shall have access to all library reference facilities maintained by state agencies. The council is authorized to accept and use any funds made available to it through the terms of any cooperative agreement that it may make with any agency whatsoever for the accomplishment of the purposes of sections 50-401 to 50-415.

Source: Laws 1937, c. 118, § 8, p. 423; Laws 1939, c. 60, § 3, p. 262; C.S.Supp.,1941, § 50-508; R.S.1943, § 50-412; Laws 1992, LB 898, § 3.

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.

50-414 Legislative Council; recommendations; publication.

The recommendations of the council shall be completed and made public at least thirty days prior to any regular session of the Legislature at which such recommendations are to be submitted. A copy of said recommendations shall be mailed to the address of each member of the Legislature, to each elective state officer, and to the State Library.

Source: Laws 1937, c. 118, § 10, p. 424; C.S.Supp.,1941, § 50-510; R.S.1943, § 50-414.

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.

50-416 Legislative Research; Director of Research.

The office of Legislative Research is established within the Legislative Council. The office shall provide nonpartisan public policy and legal research for members of the Legislature and their staffs and maintain a legislative reference library for the use of members of the Legislature and their staffs. The Director of Research shall be responsible for hiring, firing, and supervising the research office staff.

Source: Laws 2009, LB620, § 2.

50-416.01 Nebraska Retirement Systems Committee; members.

The Legislature shall select five of its members who shall serve, together with the chairperson of the Appropriations Committee, as the Nebraska Retirement Systems Committee. The Nebraska Retirement Systems Committee shall be a standing committee of the Legislature. The chairperson and members shall be chosen in the same manner as chairpersons and members of the other standing committees of the Legislature.

Source: Laws 1989, LB 189, § 1.

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.

50-417.01 Repealed. Laws 2006, LB 1019, § 23.

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.

50-418 Legislative Fiscal Analyst; office established; personnel; Appropriations Committee; duties.

There shall be established within the Legislative Council the office of Legislative Fiscal Analyst. The Legislative Fiscal Analyst, with the approval of the Executive Board of the Legislative Council, may employ necessary assistants.

The Appropriations Committee shall determine the budgeting and related needs of each agency of state government before and during each session of the Legislature for the use of the Legislature. The committee, under the direction of the Executive Board of the Legislative Council, shall secure sufficient personnel and funds for the operation of the staff to go physically into each agency of state government and by observation and contact be able to defend and substantiate its recommendation and to accomplish the objective stated in this section.

Source: Laws 1961, c. 253, § 1, p. 746; Laws 1967, c. 595, § 2, p. 2026; Laws 1986, LB 996, § 3; Laws 1992, LB 898, § 4.

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 pre-session 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.

50-419.01 Legislative Fiscal Analyst; present evaluation of state operations; when.

The Legislative Fiscal Analyst shall present to the Appropriations Committee, beginning the fifth legislative day, an evaluation of the operations of the state government including those issues, policies, and problems which have come to his or her attention or which resulted from analyses and in which improvement in performance and organization is possible. The Legislative Fiscal Analyst shall, if requested, recommend alternatives to the identified problems and related needs.

Source: Laws 1969, c. 429, § 3, p. 1451; Laws 1973, LB 291, § 1; Laws 1986, LB 996, § 5.

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 website.

(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.

50-420 Fiscal analyst; officer, board, commission, and department of state government; furnish information.

Each officer, board, commission, and department of state government, including the Accounting Administrator of the Department of Administrative Services, shall furnish to the Legislative Fiscal Analyst, upon request, any information in its possession, including records received from other officers, boards, commissions, or departments of state government, whether such information is retained in computer files or otherwise, if such information is directly

related to the performance of the official duties of the Legislative Fiscal Analyst under sections 50-418 to 50-420.

Source: Laws 1961, c. 253, § 3, p. 747; Laws 1979, LB 193, § 2.

50-421 Office of Legislative Audit; Legislative Auditor.

The office of Legislative Audit is established within the Legislative Council. The office shall conduct performance audits. The Legislative Auditor shall be responsible for hiring, firing, and supervising the performance audit staff.

Source: Laws 2006, LB 956, § 2; Laws 2009, LB620, § 1.

50-422 Repealed. Laws 2012, LB 782, § 253.

50-423 Transferred to section 81-126.

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.

50-436 Repealed. Laws 1984, LB 637, § 1.

50-437 Nebraska Legislative Shared Information System Cash Fund; created; investment.

There is hereby created the Nebraska Legislative Shared Information System Cash Fund, which fund shall consist of fees received from services provided by the Legislature. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Legislative Shared Information System 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 1986, LB 599, § 2; Laws 1995, LB 7, § 54; Laws 2009, First Spec. Sess., LB3, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

50-438 Legislative Council Retirement Study Fund; created; use; transfers; investment.

There is hereby created the Legislative Council Retirement Study Fund. The fund shall consist of money appropriated to it by the Legislature and transfers made pursuant to subdivision (2)(f) of section 84-1503. Money in the fund shall only be used for a comprehensive study of the retirement systems listed in subdivision (1)(a) of section 84-1503. Any money remaining in the fund eighteen months after the date of transfer shall be transferred by the State Treasurer back to the retirement systems for credit to the various retirement funds. Any money in the Legislative Council Retirement Study 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 1992, LB 672, § 34; Laws 1994, LB 1066, § 41; Laws 1998, LB 1191, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

50-439 Repealed. Laws 2000, LB 890, § 1.

50-440 Repealed. Laws 2000, LB 890, § 1.

50-441 Repealed. Laws 2000, LB 890, § 1.

50-442 Repealed. Laws 2000, LB 890, § 1.

50-443 Repealed. Laws 1999, LB 11, § 1.

50-444 Repealed. Laws 2012, LB 706, § 1.

50-445 State-Tribal Relations Committee; members.

The State-Tribal Relations Committee is hereby established as a special legislative committee with the intent of fostering better relationships between the state and the federally recognized Indian tribes within the state. The Executive Board of the Legislative Council shall appoint seven members of the Legislature to the committee. The appointments shall be based on interest and knowledge. The chairperson and vice-chairperson of the State-Tribal Relations Committee shall also be designated by the executive board. All appointments shall be made within the first six days of the legislative session in odd-numbered years. Members shall serve two-year terms corresponding with legislative sessions and may be reappointed for consecutive terms. The committee shall meet as necessary to, among other things, consider, study, monitor, and review legislation that impacts state-tribal relations issues and to present draft legislation and policy recommendations to the appropriate standing committee of the Legislature.

Source: Laws 2007, LB34, § 1.

50-446 Corporate farming and ranching court rulings; legislative findings.

The Legislature finds that the ruling of the United States District Court for the District of Nebraska in *Jones v. Gale*, 405 F. Supp. 2d 1066, D. Neb. 2005, and subsequent rulings on appeal affirming such ruling holding Article XII, section 8, of the Constitution of Nebraska to be invalid, enjoined, or limited in application has significant implications for the future structure, development, and progress of agricultural production in Nebraska.

Source: Laws 2007, LB516, § 1.

50-447 Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.

(1) It is the intent of the Legislature to support and facilitate a study by the Agriculture Committee of the Legislature to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate,

but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production.

(2) Within the limits of funds appropriated for such purpose, the Executive Board of the Legislative Council may, in coordination and cooperation with the Agriculture Committee of the Legislature, commission experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to provide assistance, specific research or reports, or presentations in order to assist the Agriculture Committee of the Legislature in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 2.

50-448 Attorney General; duties; powers.

(1) It is the intent of the Legislature that the Attorney General perform, acquire, and otherwise cause to be made available such research as may be appropriate to inform and assist the Agriculture Committee of the Legislature in identifying policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production in Nebraska.

(2) The Attorney General may contract with experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to assist the Attorney General in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 3.

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.

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.

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.

Section

- 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 7

MENTAL HEALTH CRISIS HOTLINE TASK FORCE

Section

50-701. Mental Health Crisis Hotline Task Force; duties; members; officers; meetings; expenses; staff; report; termination.

50-701 Mental Health Crisis Hotline Task Force; duties; members; officers; meetings; expenses; staff; report; termination.

(1) The Mental Health Crisis Hotline Task Force is created. The task force shall develop an implementation plan for Nebraska to integrate and utilize the 988 mental health crisis hotline established pursuant to the federal National Suicide Hotline Designation Act of 2020, Public Law 116-172.

(2) The task force shall identify a method to integrate local mental health crisis hotlines to ensure each individual who accesses a local mental health crisis hotline is connected to a qualified mental or behavioral health professional regardless of the time, date, or number of individuals trying to simultaneously access a local mental health crisis hotline. The task force shall develop a plan for staffing a statewide mental health crisis hotline, shall coordinate with local mental health authorities to carry out this section, and may conduct any other business related to such duties.

(3) The federal National Suicide Hotline Designation Act of 2020 authorizes states to impose fees on telecommunications services, wireless device services,

and Internet protocol-enabled voice services to provide funding in a manner similar to the funding of 911 services. The task force shall conduct a cost analysis to determine how such a fee structure could be designed to cover the costs of the 988 mental health crisis hotline.

(4) The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or the chairperson's designee;

(b) The chairperson of the Judiciary Committee of the Legislature or the chairperson's designee;

(c) The chairperson of the Transportation and Telecommunications Committee of the Legislature or the chairperson's designee;

(d) Two at-large members of the Legislature appointed by the Executive Board of the Legislative Council;

(e) The Director of Behavioral Health of the Division of Behavioral Health of the Department of Health and Human Services or the director's designee, as a nonvoting, ex officio member;

(f) The chairperson of the Public Service Commission or the chairperson's designee, as a nonvoting, ex officio member; and

(g) The following members who shall be nonvoting members appointed by the voting members of the task force listed in subdivisions (a) through (d) of this subsection through an application and selection process and selected from among (i) mental or behavioral health clinicians licensed to practice in the state, (ii) behavioral and mental health service providers, (iii) advocacy groups that focus on behavioral and mental health, (iv) educational institutions, (v) county and municipal law enforcement from each congressional district, (vi) other representatives of county and municipal governments from each congressional district, and (vii) telecommunications industry representatives.

(5) The task force shall choose a chairperson and a vice-chairperson from its voting membership. The task force shall meet at the call of the chairperson but shall hold its first meeting no later than July 1, 2021. The members of the task force shall serve without compensation but shall be entitled to receive reimbursement for expenses incurred incident to such service as provided in sections 81-1174 to 81-1177. The Executive Board of the Legislative Council may provide the task force with a legal counsel, committee clerk, and other staff as required by the task force from existing legislative staff.

(6) The task force shall file a report electronically with the Clerk of the Legislature, and with the Governor, regarding its implementation plan and any recommendations, together with drafts of any legislation necessary to carry out any recommendations, no later than December 17, 2021.

(7) The task force shall terminate on December 31, 2022.

Source: Laws 2021, LB247, § 1.

Effective date May 25, 2021.

ARTICLE 8

WATER RESOURCES

Section

50-801. Water resources; legislative findings and declarations.

50-802. Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature; established; members; duties; termination.

50-801 Water resources; legislative findings and declarations.

The Legislature finds and declares as follows:

- (1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;
- (2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;
- (3) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;
- (4) The state's water resources provide economic benefit to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boost local economies;
- (5) Nebraska has tremendous water resources across the state, including, but not limited to, the Ogallala Aquifer, Lake McConaughy, the Platte River, the Republican River, and the Missouri River. The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;
- (6) In light of the disruption from the COVID-19 coronavirus pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;
- (7) Studies should be conducted focusing on securing Nebraska's future water supply and strengthening Nebraska's flood control infrastructure, while also considering economic and recreational opportunities, including opportunities from increased tourism, in finding innovative solutions and winning opportunities for the State of Nebraska;
- (8) Any such studies must not deter ongoing economic activity or fail to protect current investment in the areas under study; and
- (9) An investment in a one-time series of studies that take advantage of previous studies while including innovative approaches and new technologies is best positioned to find solutions for all Nebraskans, especially Nebraskans living, working, and investing in the areas under study.

Source: Laws 2021, LB406, § 1.

Effective date May 26, 2021.

50-802 Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature; established; members; duties; termination.

- (1) The Statewide Tourism And Recreational Water Access and Resource Sustainability (STAR WARS) Special Committee of the Legislature is hereby established as a special legislative committee to exercise the powers and perform the duties provided in this section. The special legislative committee shall consist of no fewer than seven members of the Legislature as determined by the Executive Board of the Legislative Council. The special legislative committee shall consist of the Speaker of the Legislature, who shall serve as chairperson of the special legislative committee, the chairperson of the Natural

Resources Committee of the Legislature, one member of the Appropriations Committee of the Legislature, and at least four other members of the Legislature appointed by the executive board. The appointed members of the special legislative committee shall be members who represent legislative districts comprising portions of the areas under study or who otherwise have knowledge of such areas.

(2) The Executive Board of the Legislative Council shall provide staff as required by the special legislative committee from existing legislative staff. In addition, the special legislative committee may hire additional staff, make expenditures for travel, and enter into contracts for consulting, engineering, and development studies. The contracts shall be based on competitive bids and subject to approval by the executive board upon the recommendation of a majority of the members of the special legislative committee. It is the intent of the Legislature to appropriate two million dollars for fiscal year 2021-22 to carry out the purposes of this section.

(3)(a) Studies shall be conducted on:

(i) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(ii) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(iii) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park.

(b) The study of the Lower Platte River pursuant to subdivision (3)(a)(i) of this section shall not include a study of any dam on a Platte River channel, but may include infrastructure options that maintain the integrity of the main channel of the Platte River. The committee may study dams relating to tributaries of the Platte River and levees in such area.

(c) The studies regarding Lake McConaughy in Keith County and Lewis and Clark Lake and Niobrara State Park in Knox County shall evaluate the outcomes and the economic benefits of proposed development and improvements to residents, the local region, and state tourism.

(4) The special legislative committee may hold hearings and request and receive reports from federal, state, county, city, and village agencies and natural resources districts regarding matters pertaining to such studies. The special legislative committee may hold one or more closed sessions for the receipt of confidential information if at least one-half of the members of the special legislative committee vote in open session to hold a closed session. The special legislative committee may appoint one or more subcommittees for the purpose of receiving public input as it relates to the purposes described in section 50-801 and this section.

(5) The special legislative committee shall endeavor to complete each study on or before December 31, 2021, but such studies shall be completed no later than December 31, 2022.

(6) The special legislative committee shall terminate on December 31, 2022.

Source: Laws 2021, LB406, § 2.

Effective date May 26, 2021.

**ARTICLE 9
RETIREMENT**

Section

50-901. Repealed. Laws 1991, LB 549, § 75.
 50-902. Repealed. Laws 1991, LB 549, § 75.
 50-903. Repealed. Laws 1991, LB 549, § 75.
 50-904. Repealed. Laws 1991, LB 549, § 75.
 50-905. Repealed. Laws 1991, LB 549, § 75.
 50-906. Repealed. Laws 1991, LB 549, § 75.
 50-907. Repealed. Laws 1991, LB 549, § 75.
 50-908. Repealed. Laws 1991, LB 549, § 75.
 50-909. Repealed. Laws 1991, LB 549, § 75.
 50-910. Repealed. Laws 1991, LB 549, § 75.
 50-911. Repealed. Laws 1991, LB 549, § 75.
 50-912. Repealed. Laws 1991, LB 549, § 75.
 50-913. Repealed. Laws 1991, LB 549, § 75.
 50-914. Repealed. Laws 1991, LB 549, § 75.
 50-915. Repealed. Laws 1991, LB 549, § 75.
 50-916. Repealed. Laws 1991, LB 549, § 75.
 50-917. Repealed. Laws 1991, LB 549, § 75.
 50-918. Repealed. Laws 1991, LB 549, § 75.
 50-919. Repealed. Laws 1991, LB 549, § 75.

50-901 Repealed. Laws 1991, LB 549, § 75.

50-902 Repealed. Laws 1991, LB 549, § 75.

50-903 Repealed. Laws 1991, LB 549, § 75.

50-904 Repealed. Laws 1991, LB 549, § 75.

50-905 Repealed. Laws 1991, LB 549, § 75.

50-906 Repealed. Laws 1991, LB 549, § 75.

50-907 Repealed. Laws 1991, LB 549, § 75.

50-908 Repealed. Laws 1991, LB 549, § 75.

50-909 Repealed. Laws 1991, LB 549, § 75.

50-910 Repealed. Laws 1991, LB 549, § 75.

50-911 Repealed. Laws 1991, LB 549, § 75.

50-912 Repealed. Laws 1991, LB 549, § 75.

50-913 Repealed. Laws 1991, LB 549, § 75.

50-914 Repealed. Laws 1991, LB 549, § 75.

50-915 Repealed. Laws 1991, LB 549, § 75.

50-916 Repealed. Laws 1991, LB 549, § 75.

50-917 Repealed. Laws 1991, LB 549, § 75.

50-918 Repealed. Laws 1991, LB 549, § 75.

50-919 Repealed. Laws 1991, LB 549, § 75.

ARTICLE 10

YOUTH LEADERSHIP ACADEMY

Section

50-1001. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1002. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1003. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1004. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1005. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1006. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1007. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1008. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1009. Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1001 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1002 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1003 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1004 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1005 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1006 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1007 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1008 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

50-1009 Repealed. Laws 1992, Third Spec. Sess., LB 21, § 4.

ARTICLE 11

LEGISLATIVE DISTRICTS

Cross References

Constitutional provisions, see Article III, section 5, Constitution of Nebraska.

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.

- Section
- 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. Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.
 - 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. Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.
 - 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.
 - 50-1151. Repealed. Laws 2001, LB 852, § 53.
 - 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 Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.
- 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 Repealed. Laws 1992, Second Spec. Sess., LB 7, § 8.

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.

50-1151 Repealed. Laws 2001, LB 852, § 53.

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 2020 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 LEG21-39006, LEG21-39006-1, LEG21-39006-2, LEG21-39006-2A, LEG21-39006-3, LEG21-39006-4, LEG21-39006-5, LEG21-39006-6, LEG21-39006-7, LEG21-39006-8, LEG21-39006-9, LEG21-39006-10, LEG21-39006-11, LEG21-39006-12, LEG21-39006-13, LEG21-39006-14, LEG21-39006-15, LEG21-39006-15A, LEG21-39006-16, LEG21-39006-16A, LEG21-39006-17, LEG21-39006-18, LEG21-39006-19, LEG21-39006-19A, LEG21-39006-20, LEG21-39006-21, LEG21-39006-22, LEG21-39006-22A, LEG21-39006-23, LEG21-39006-24, LEG21-39006-25, LEG21-39006-26, LEG21-39006-27, LEG21-39006-28, LEG21-39006-29, LEG21-39006-30, LEG21-39006-30A, LEG21-39006-31, LEG21-39006-32, LEG21-39006-32A, LEG21-39006-33, LEG21-39006-33A, LEG21-39006-34, LEG21-39006-34A, LEG21-39006-35, LEG21-39006-36, LEG21-39006-37, LEG21-39006-38, LEG21-39006-38A, LEG21-39006-39, LEG21-39006-40, LEG21-39006-40A, LEG21-39006-40B, LEG21-39006-41, LEG21-39006-41A, LEG21-39006-41B, LEG21-39006-42, LEG21-39006-42A, LEG21-39006-43, LEG21-39006-44, LEG21-39006-44A, LEG21-39006-45, LEG21-39006-46, LEG21-39006-47, LEG21-39006-48, and LEG21-39006-49, filed with the Clerk of the Legislature, and incorporated by

reference as part of Laws 2021, LB3, One Hundred Seventh Legislature, First Special Session.

(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 October 1, 2021.

(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 website 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; Laws 2021, First Spec. Sess., LB3, § 1.
Effective date October 1, 2021.

50-1154 Legislative districts; change; when operative.

The changes made to this section and section 50-1153 by Laws 2021, LB3, One Hundred Seventh Legislature, First Special Session, shall become operative on October 1, 2021. The members of the Legislature from the even-numbered districts shall be nominated at the primary election in 2022 and elected at the general election in November 2022 for the term commencing January 4, 2023. The members of the Legislature elected or appointed prior to October 1, 2021, shall represent the newly established districts for the balance of their terms, with each member representing the same numbered district as prior to October 1, 2021.

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; Laws 2021, First Spec. Sess., LB3, § 2.
Effective date October 1, 2021.

ARTICLE 12

LEGISLATIVE PERFORMANCE AUDIT ACT

Section	
50-1201.	Act, how cited.
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.

Section	
50-1207.	Performance audits; criteria.
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.

50-1201 Act, how cited.

Sections 50-1201 to 50-1215 shall be known and may be cited as the Legislative Performance Audit Act.

Source: Laws 1992, LB 988, § 1; Laws 2003, LB 607, § 3.

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 Committee 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 residing 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.

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.

50-1207 Performance audits; criteria.

The committee may develop criteria to be used to screen requests for performance audits. The committee shall consult with the Legislative Auditor in the application of the screening criteria.

Source: Laws 1992, LB 988, § 7; Laws 2003, LB 607, § 10; Laws 2006, LB 956, § 7.

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;
- (i) The Urban Redevelopment Act; and

(j) 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, 221113, 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; Laws 2021, LB84, § 1; Laws 2021, LB544, § 30.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB84, section 1, with LB544, section 30, to reflect all amendments.

Note: Changes made by LB84 became effective August 28, 2021. Changes made by LB544 became operative January 1, 2022.

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.

Urban Redevelopment Act, see section 77-6901.

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 databases 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

- 50-1301. Legislative findings.
- 50-1302. Government, Military and Veterans Affairs Committee; report.
- 50-1303. Government, Military and Veterans Affairs Committee; conduct evaluation.
- 50-1304. Duty to furnish information; report and evaluation assistance.

50-1301 Legislative findings.

The Legislature finds that state government actions have produced an increase in the numbers of boards, commissions, and similar entities that support, advise, direct, or administer various state programs. The process has evolved without sufficient legislative and executive oversight and without a system of checks and balances. Because the Legislature is responsible for the expenditure of public money and the shaping of the administration of state

government and is held accountable for fiscal policy, the Legislature should also be responsible for the termination, continuation, or modification of such boards, commissions, and similar entities so that it may be assured that its directives have been faithfully carried out.

Source: Laws 1999, LB 298, § 1.

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;
- (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.

50-1303 Government, Military and Veterans Affairs Committee; conduct evaluation.

(1) The Government, Military and Veterans Affairs Committee of the Legislature may randomly select and conduct an evaluation of any board, commission, or similar entity. An evaluation conducted by the committee shall include, but not be limited to, the following:

- (a) A review of the basic assumptions underlying the creation of the board, commission, or entity;
- (b) A statement of the impact and effectiveness of the programs, policies, services, or activities administered by, or under the supervision of, the board, commission, or entity; and
- (c) A recommendation as to whether the board, commission, or entity should be terminated, continued, or modified.

(2) If the committee believes that a more extensive evaluation of a board, commission, or entity is necessary, the chairperson of the committee, on the committee's behalf, may request the Legislative Performance Audit Committee

to conduct a performance audit pursuant to the Legislative Performance Audit Act. Nothing in this section shall be construed to give requests for performance audits under this section priority over other requests under consideration by the Legislative Performance Audit Committee.

Source: Laws 1999, LB 298, § 3; Laws 2003, LB 607, § 19.

Cross References

Legislative Performance Audit Act, see section 50-1201.

50-1304 Duty to furnish information; report and evaluation assistance.

(1) All agencies, boards, commissions, and departments of the state shall furnish such information, reports, aid, services, and assistance as may be requested by any standing committee of the Legislature in the performance of its duties.

(2) The Government, Military and Veterans Affairs Committee of the Legislature shall use its staff and may also request assistance from the Director of Research of the Legislature, the Legislative Fiscal Analyst, or any other division within the Legislature as may be necessary in the performance of the duties set forth in sections 50-1301 to 50-1304.

Source: Laws 1999, LB 298, § 4.

ARTICLE 14

LEGISLATURE'S PLANNING COMMITTEE

Section

50-1401. Legislative findings and declarations.

50-1402. Legislature's Planning Committee; established; members; staff.

50-1403. Legislature's Planning Committee; duties.

50-1404. Legislature's Planning Committee; powers.

50-1401 Legislative findings and declarations.

The Legislature finds and declares that:

(1) State government has significant challenges to face. An ever-changing global economy, an aging population, outmigration of educated young people, and constantly expanding needs for services, among other issues, require that the Legislature consider the long-term trends and factors affecting the welfare of Nebraskans and the long-term implications of the decisions made by the members of the Legislature;

(2) It is necessary for the Legislature to identify emerging trends, assets, and challenges of the state;

(3) It is vital for Nebraska to have continuity in policy;

(4) It is necessary to establish a process of long-term state planning within the Legislature; and

(5) It is the duty of the Legislature to assess the long-range needs of Nebraska and to adopt legislation which meets those needs.

Source: Laws 2009, LB653, § 1.

50-1402 Legislature's Planning Committee; established; members; staff.

The Legislature's Planning Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided

for in this section. The committee shall be comprised of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and six other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislature's Planning Committee includes adequate geographic representation. The chairperson and vice-chairperson of the committee shall be elected by majority vote of the committee. The committee shall be subject to all rules prescribed by the Legislature. The initial members of the committee shall be appointed as soon as possible after May 14, 2009, and thereafter the committee shall be appointed at the beginning of each regular legislative session and shall meet as needed. The committee shall have staff support from the various legislative divisions and staff.

Source: Laws 2009, LB653, § 2.

50-1403 Legislature's Planning Committee; duties.

The Legislature's Planning Committee shall:

- (1) Collect and analyze data about Nebraska, including, but not limited to, demographics, workforce, education, wages, wealth, tax structure, revenue, natural resources, assets, challenges, trends, and growth and efficiency of government;
- (2) Identify long-term issues significant to the state;
- (3) Set goals and benchmarks;
- (4) Issue a yearly report of its findings; and
- (5) Propose legislation.

Source: Laws 2009, LB653, § 3.

50-1404 Legislature's Planning Committee; powers.

In order to fulfill its duties, the Legislature's Planning Committee may:

- (1) Hold public hearings;
- (2) Obtain data and information from state agencies, the University of Nebraska, and private entities that contract with the state;
- (3) Contract for assistance, including consultants, with the approval of the Executive Board of the Legislative Council; and
- (4) Exercise any other authority or powers as granted from time to time by the executive board.

Source: Laws 2009, LB653, § 4.

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.

Section

- 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.

1. State Library. 51-101 to 51-112.
2. Public Libraries. 51-201 to 51-220.
3. County and Regional Libraries. Repealed.
4. Nebraska Library Commission.
 - (a) Nebraska Library Commission. 51-401 to 51-410.01.
 - (b) Nebraska Publications Clearinghouse. 51-411 to 51-418.
5. Museums. 51-501 to 51-513.
6. Antique Farm Machinery and Equipment. Repealed.
7. Museum Property Act. 51-701 to 51-712.
8. Public Library Federation. 51-801 to 51-811.

ARTICLE 1

STATE LIBRARY

Cross References

Constitutional provisions:

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Administrative code, deposited with, see section 84-906.03.

Examination and audit by Auditor of Public Accounts, see section 84-304.

Session laws and journals, delivery to State Librarian, use of, see sections 49-506 to 49-509.

Statutes, distribution to and use, see section 49-617.

Supreme Court and Nebraska Court of Appeals decisions, deposited with, see section 24-209.

Workers' compensation, court rules, deposited with, see section 48-163.

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- 51-101. State Library; what constitutes.
- 51-102. State Library; librarian.
- 51-103. State Library; directors; powers.
- 51-104. Book register; entries.
- 51-105. Books; injury or failure to return; penalty.
- 51-106. Repealed. Laws 1981, LB 545, § 52.
- 51-107. Books; labeling.
- 51-108. Books; sale, exchange, disposal; authorization.
- 51-109. Books; removal; penalty.
- 51-110. Repealed. Laws 1972, LB 1284, § 23.
- 51-111. Repealed. Laws 1972, LB 1284, § 23.
- 51-112. Repealed. Laws 1972, LB 1284, § 23.

51-101 State Library; what constitutes.

The books, pamphlets, maps and charts belonging to the state, now in the State Library, or which shall hereafter be added to the same, shall constitute the State Library.

Source: Laws 1871, § 1, p. 52; R.S.1913, § 3777; C.S.1922, § 3170; C.S.1929, § 51-101; R.S.1943, § 51-101.

51-102 State Library; librarian.

The Clerk of the Supreme Court shall have the charge of the State Library, of which he shall be librarian.

Source: Laws 1871, § 2, p. 52; R.S.1913, § 3778; C.S.1922, § 3171; C.S.1929, § 51-102; R.S.1943, § 51-102.

Cross References

For provisions of bond of State Librarian, see section 11-201.

51-103 State Library; directors; powers.

The judges of the Supreme Court shall constitute a board of directors of the State Library. They shall have power to make such rules as they may deem proper, not inconsistent with sections 51-101 to 51-109, for the regulation of the library under their direction, and may prescribe penalties for any violation thereof, which shall be collected in the same manner as for the nonreturn or injury of any books.

Source: Laws 1871, §§ 3, 4, p. 52; R.S.1913, § 3779; C.S.1922, § 3172; C.S.1929, § 51-103; R.S.1943, § 51-103.

51-104 Book register; entries.

The librarian shall cause to be kept a register of all books issued and returned at the time they shall be so issued and returned. None of the books, except the laws, journals, and reports of this state, which may be taken from the library, shall be detained more than ten days, and all the books taken out by officers or members of the Legislature shall be returned at the close of the session.

Source: Laws 1871, § 6, p. 52; R.S.1913, § 3781; C.S.1922, § 3174; C.S.1929, § 51-104; R.S.1943, § 51-104.

51-105 Books; injury or failure to return; penalty.

If any person injures or fails to return any book taken from the library, he shall forfeit and pay to the librarian for the use of the library, double the value of the book, or of the set to which it belongs, if a set is broken by its loss, to be recovered in an action in the name of the state. Before the Director of Administrative Services shall issue his warrant in favor of any person authorized to take books from the library, for the value of his services or amount of his salary, he shall be satisfied that such person has returned all books taken from the library, or settled for the same; otherwise he shall deduct all accounts for the detention or injury of such books.

Source: Laws 1871, § 7, p. 53; R.S.1913, § 3782; C.S.1922, § 3175; C.S.1929, § 51-105; R.S.1943, § 51-105.

51-106 Repealed. Laws 1981, LB 545, § 52.**51-107 Books; labeling.**

It shall be the duty of the librarian to cause each book to be labeled with a printed or stamped label containing the words Nebraska State Library, and also to write the same words on the thirtieth page of each volume.

Source: Laws 1871, § 12, p. 54; R.S.1913, § 3785; C.S.1922, § 3178; C.S.1929, § 51-107; R.S.1943, § 51-107.

51-108 Books; sale, exchange, disposal; authorization.

The directors may authorize the sale, exchange, or disposal of any surplus, damaged, defective, obsolete, or duplicate books in the library and surplus or

obsolete books, reports, or pamphlets which are for sale or distribution by the librarian.

Source: Laws 1871, § 13, p. 54; R.S.1913, § 3786; C.S.1922, § 3179; Laws 1929, c. 64, § 2, p. 241; C.S.1929, § 51-108; R.S.1943, § 51-108; Laws 1957, c. 222, § 1, p. 764.

51-109 Books; removal; penalty.

If any person not authorized by the regulations made by the directors shall take a book from the library, either with or without the consent of the librarian, he shall be guilty of a Class V misdemeanor.

Source: Laws 1871, § 15, p. 54; R.S.1913, § 3788; C.S.1922, § 3181; Laws 1929, c. 64, § 3, p. 241; C.S.1929, § 51-109; R.S.1943, § 51-109; Laws 1977, LB 40, § 307.

51-110 Repealed. Laws 1972, LB 1284, § 23.

51-111 Repealed. Laws 1972, LB 1284, § 23.

51-112 Repealed. Laws 1972, LB 1284, § 23.

ARTICLE 2

PUBLIC LIBRARIES

Cross References

Cities, establish and maintain:

- First-class, see sections 16-251 and 19-1302.
- Metropolitan-class, see section 14-102.
- Primary-class, see section 15-230.
- Second-class, see sections 17-967 to 17-969 and 19-1302.
- Villages, see sections 17-967 to 17-969 and 19-1302.

Section

- 51-201. Public libraries; establishment; tax; amount authorized; limitation; library fund; county library; election required; merger authorized.
- 51-201.01. Terms, defined.
- 51-201.02. Legislative findings.
- 51-201.03. County library; petition to establish; procedure; election.
- 51-201.04. County board; notice required; library merger; procedure; election.
- 51-201.05. Merger of county and municipal libraries; procedure.
- 51-201.06. Merger; transfer of assets and employees.
- 51-201.07. Withdrawal of municipal library from county library system; procedure.
- 51-202. City or village library; library board; members; elected or appointed; terms; vacancies, how filled.
- 51-203. County or township library; board; members; election or appointment; terms; vacancies; how filled.
- 51-204. Library board; organization; officers; quorum.
- 51-205. Library board; bylaws, rules, and regulations.
- 51-206. Library board; mortgages; release or renewal.
- 51-207. Library board; funds; buildings; custody and control.
- 51-208. Library board; use of library for city or school purposes; contracts.
- 51-209. Public library; funds; disbursements; sinking fund; bonds.
- 51-210. Library board; building sites; acquisition; procedure.
- 51-211. Library board; general powers and duties; governing body; duty; discrimination prohibited.
- 51-212. Public library; use and purpose.
- 51-213. Library board; annual report; contents.
- 51-214. Penalties; action to recover; disposition of funds collected.
- 51-215. Public library; donations; library board may accept.

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51-216.	Real estate; sale and conveyance; conditions; remonstrance; procedure.
51-217.	Public library; use by school districts.
51-218.	Public library; property; exemption from execution and taxation; when.
51-219.	Private and associate libraries; deposit and use; authorized; requirements.
51-220.	Law library; establishment; maintenance; supervision.

51-201 Public libraries; establishment; tax; amount authorized; limitation; library fund; county library; election required; merger authorized.

The city council of any city, the board of trustees of any incorporated village, the county board of any county, and the electors of any township at their annual town meeting shall have the power to establish a public library free of charge for the use of the inhabitants of such city, village, county, or township.

Any such council, board, or electors may also contract for the use of a public library already established and may levy a tax of not more than ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city, village, county, or township annually to be levied and collected in like manner as other taxes in such city, village, county, or township, except that when any county discontinues township organization, the county shall levy and collect a tax of not more than ten and five-tenths cents on each one hundred dollars for such public library. The levy shall be subject to sections 77-3442 and 77-3443. The amount collected from such levy shall be known as the library fund.

Before establishing a county library, the county board shall submit the question to the voters of the county at a general election pursuant to section 32-559, including only incorporated and unincorporated areas which do not have a public library, and a majority of the voters voting on the question of whether to establish a county library shall authorize the establishment of such county library and the levying of the tax. A city, village, or township within the county that has a public library may merge with the county library, if established, upon a majority vote pursuant to section 51-201.04. When such questions are submitted and carried, the county board shall include the county library in its next succeeding estimate and levy. Such submission shall not be required when the board levies a tax for the purpose of contracting for use of a library already established. When the county board makes a levy for a county library or for the purpose of contracting for use of a public library already established, the county board shall omit from the levy of the library tax all property within the limits of any city, village, or township in such county which already maintains a library by public tax unless the voters of the city, village, or township have voted to merge with the county library.

The method of merger of libraries provided in this section and sections 51-201.03 to 51-201.07 shall not be construed as the exclusive way to merge libraries or library facilities. Nothing in such sections shall prohibit a county, city, village, or township from entering into an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act relating to library services.

Source: Laws 1911, c. 73, § 1, p. 313; R.S.1913, § 3792; Laws 1919, c. 120, § 1, p. 285; C.S.1922, § 3185; C.S.1929, § 51-201; Laws 1931, c. 98, § 1, p. 267; C.S.Supp.,1941, § 51-201; R.S.1943, § 51-201; Laws 1951, c. 170, § 1, p. 657; Laws 1953, c. 287, § 65, p. 968; Laws 1957, c. 223, § 1, p. 765; Laws 1967, c. 120,

§ 2, p. 384; Laws 1971, LB 493, § 1; Laws 1979, LB 187, § 178; Laws 1991, LB 94, § 1; Laws 1992, LB 719A, § 154; Laws 1996, LB 1114, § 60; Laws 1997, LB 250, § 10; Laws 1997, LB 269, § 30; Laws 1998, LB 306, § 5; Laws 1999, LB 87, § 76.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

51-201.01 Terms, defined.

For purposes of sections 51-201 to 51-219:

(1) Basic services shall include, but not be limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services; and

(2) Nonbasic services shall include, but not be limited to, use of:

(a) Photocopying equipment;

(b) Telephones, facsimile equipment, and other telecommunications equipment;

(c) Media equipment;

(d) Personal computers; and

(e) Videocassette recording and playing equipment.

Source: Laws 1990, LB 1236, § 1.

51-201.02 Legislative findings.

The Legislature finds and declares that public libraries perform services which are vitally important for the maintenance of an educated and democratic society, including, but not limited to, providing information which stimulates thought, awareness, and involvement in issues of public interest and providing avenues for intellectual and cultural growth and enjoyment. The Legislature further finds that an educated and culturally aware society is increasingly important in an economy in which Nebraskans must compete on a global scale. It is the intent of the Legislature that Nebraskans will help lead the nation into the world of the twenty-first century.

Source: Laws 1997, LB 250, § 9.

51-201.03 County library; petition to establish; procedure; election.

(1) The registered voters of the incorporated and unincorporated areas of a county which do not have a public library may file an initiative petition with the county board requesting the establishment of a county library. The petition shall be filed by July 31 prior to a statewide general election. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be five percent of the voters registered at the last statewide general election in the incorporated and unincorporated areas of the county which do not have a public library. The election commissioner or county clerk shall notify the county board within thirty days

after receiving the petitions from the county board whether the required number of signatures has been gathered.

(2) If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall notify the governing body and library board of each incorporated area within the county within ten days after such determination and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election and shall submit the question of whether to establish a county library to the voters as required in section 51-201.

Source: Laws 1997, LB 250, § 11; Laws 2008, LB269, § 12.

51-201.04 County board; notice required; library merger; procedure; election.

(1) At the time the county board decides to hold an election pursuant to section 51-201 on the question of establishing a public library, the county board shall notify the governing body and library board of each incorporated area within the county and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election. The notice shall be delivered and publication shall occur prior to June 1 before the election.

(2) If a city council, village board, or township board of a city, village, or township that has a public library and the library board, if one exists, of the city, village, or township both adopt a resolution indicating that they desire to merge the city, village, or township library with the county library if established and notify the county board by filing the resolutions with the county clerk by August 25, the county board shall submit the question of merger to the voters of the city, village, or township at the same time as the election pursuant to section 51-201.

(3) The registered voters of a city, village, or township that has a public library may file an initiative petition with the county board to require the issue of merger to be on the ballot in the city, village, or township. The petition shall be filed by July 31 prior to the statewide general election at which the issue would be on the ballot. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be ten percent of the voters registered in the city, village, or township at the last statewide general election. The election commissioner or county clerk shall notify the county board within thirty days after receiving the petitions from the county board whether the required number of signatures has been gathered. If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall submit the question of whether to merge with the county library, if

established, to the voters at the same time as the election pursuant to section 51-201.

Source: Laws 1997, LB 250, § 12.

51-201.05 Merger of county and municipal libraries; procedure.

In a county that has an established county library, if a city council, village board, or township board of a city, village, or township that has a public library and the library board, if one exists, of the city, village, or township both adopt a resolution indicating that such city, village, or township library desires to merge with the established county library, they shall notify the county board by filing the resolutions with the county clerk. After such notification, the city, village, or township library shall be a part of the county library as provided in section 51-201.06 and its residents shall be entitled to the benefits of the county library, and the property within such city, village, or township library shall be liable to taxes levied for county library purposes. At least once a week for two successive weeks prior to adopting such resolution, the city council, village board, or township board and library board shall publish notice of such proposed resolution and the date and the place of the meeting at which such resolution is proposed to be adopted, in a newspaper designated by the council or board and published in or of general circulation in such city, village, or township.

Source: Laws 1997, LB 250, § 13.

51-201.06 Merger; transfer of assets and employees.

If a city, village, or township library merges with a county library under sections 51-201 to 51-219, (1) all assets shall be transferred to the county library, (2) all employees of the city, village, or township library shall be transferred to the county and shall receive at least the same or comparable salaries, sick leave, vacation leave, health benefits, retirement benefits, and other benefits as provided by the city, village, or township, and (3) a plan shall be established for the repayment of any bonded indebtedness or other debt of the city, village, or township existing at the time of the merger, including, but not limited to, the payment of the debt, the establishment of a sinking fund, and the issuance of bonds by the county. The city council, village board, or township board and the county board shall enter into a merger agreement consistent with this section setting the date for the merger to take effect which shall not be more than one year after an election or after the notification to the county board under section 51-201.05. If the parties cannot agree within one year after the election or notification, any party may bring an action in the district court and the district court shall determine the conditions of the transfer of assets and employees and the plan for payment of indebtedness.

Source: Laws 1997, LB 250, § 14.

51-201.07 Withdrawal of municipal library from county library system; procedure.

If the city council, village board, or township board and library board, if one exists, both adopt a resolution indicating that such city, village, or township library no longer desires to be a part of the county library system and notify the county board by filing the resolutions with the county clerk, the county board shall submit the question to the voters of the city, village, or township at the

next statewide general election. If a majority of the voters voting on the issue vote to withdraw from the county library, then beginning on January 1 following the election, the city, village, or township shall cease to be entitled to the benefits of such county library and the property situated in such city, village, or township library shall not be liable for taxes levied for county library purposes. The city council, village board, or township board and the county board shall enter into a dissolution agreement to provide for the disposition of assets, indebtedness, and employees. If the parties cannot agree within one year after the election, either party may bring an action in the district court and the district court shall determine the disposition of assets, indebtedness, and employees.

Source: Laws 1997, LB 250, § 15.

51-202 City or village library; library board; members; elected or appointed; terms; vacancies, how filled.

(1) When any city council or village board decides by ordinance to establish and maintain a public library and reading room under sections 51-201 to 51-219, the city council or village board shall establish a library board. The library board shall have at least five members. Neither the mayor nor any member of the city council or village board shall be a member of the library board. Except as otherwise provided in subsection (2) of this section, the city council or village board shall by ordinance determine the number of members, whether the members are elected or appointed, and the length of the terms of the members. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and the city council or village board shall provide for the appointment or election of their successors. In cases of vacancies by resignation, removal, or otherwise, the city council or village board shall fill such vacancy for the unexpired term. No member shall receive any pay or compensation for any services rendered as a member of the board.

(2) If the city council or village board by ordinance provides for appointment of the members to the library board, such library board members shall be appointed by a majority vote of the members of the city council or village board. If an interlocal agreement, a memorandum of understanding, or any other contractual agreement between the city or village and another political subdivision providing for library services allows representation from the other political subdivision on the library board from outside the city or village, the governing board of the other political subdivision may appoint one or more members to the library board as provided in the interlocal agreement, memorandum of understanding, or other contractual agreement.

(3) If the city council or village board adopts an ordinance to provide for the election of library board members at municipal elections in April, it shall follow the statutes governing municipal elections. If the municipal election is to be held in conjunction with the statewide primary election, the election shall be held as provided in the Election Act. If the board members are to be elected, the city council or village board shall give public notice of such election after the adoption of such ordinance naming the offices to be filled, the length of terms, and the filing deadline for the placing of names of candidates on the ballot.

Source: Laws 1911, c. 73, § 2, p. 314; R.S.1913, § 3793; Laws 1919, c. 120, § 2, p. 286; Laws 1921, c. 233, § 1, p. 831; C.S.1922,

§ 3186; C.S.1929, § 51-202; R.S.1943, § 51-202; Laws 1961, c. 254, § 1, p. 748; Laws 1967, c. 329, § 1, p. 874; Laws 1972, LB 661, § 78; Laws 1973, LB 555, § 1; Laws 1981, LB 194, § 1; Laws 1994, LB 76, § 569; Laws 1997, LB 250, § 16.

Cross References

Election Act, see section 32-101.

51-203 County or township library; board; members; election or appointment; terms; vacancies; how filled.

When the county board of any county or the electors of any township vote to establish and maintain a public library, the county board or the township board shall establish a library board. The library board shall have at least five members. No member of the county board or township board shall be a member of the library board. The county board or township board shall determine by resolution the number of members, whether the members are elected or appointed, and the length of the terms of the members. The terms of members serving on the effective date of a change in the number of members shall not be shortened, and the county board or township board shall provide for the appointment or election of their successors. Such county or township board shall have the power to fill for the unexpired term any vacancy which may occur in the county or township library board. No member shall receive any pay or compensation for any services rendered as a member of such board.

If the county board or township board provides for appointment of the members to the library board, such library board members shall be appointed by a majority vote of the members of the county board or township board. If the county board or township board provides for the election of library board members, the election shall be held in conjunction with the statewide primary election as provided in the Election Act and the county board or township board shall give public notice of such election after the adoption of such resolution naming the offices to be filled, the length of terms, and the filing deadline for the placing of names of candidates on the ballot.

Source: Laws 1911, c. 73, § 3, p. 314; R.S.1913, § 3794; Laws 1919, c. 120, § 3, p. 287; C.S.1922, § 3187; C.S.1929, § 51-203; R.S.1943, § 51-203; Laws 1997, LB 250, § 17.

Cross References

Election Act, see section 32-101.

51-204 Library board; organization; officers; quorum.

The members of any city, village, county, or township library board shall immediately after their appointment meet and organize by electing from their number a president, secretary, and such other officers as may be necessary. A majority of the members of a city, village, county, or township library board shall constitute a quorum for the transaction of business.

Source: Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 148; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-204; Laws 1997, LB 250, § 18.

51-205 Library board; bylaws, rules, and regulations.

The library board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the library and reading room as it may deem expedient, not inconsistent with sections 51-201 to 51-219.

Source: Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-205; Laws 1997, LB 250, § 19.

51-206 Library board; mortgages; release or renewal.

The president shall have the power to release, upon full payment, any mortgage constituting a credit to the library fund and standing in the name of such library board. The signature of the president on any such release shall be authenticated by the secretary of the board. The president and secretary in like manner, upon resolution duly passed and adopted by the board, may renew any such mortgage.

Source: Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-206.

51-207 Library board; funds; buildings; custody and control.

The library board shall have exclusive control of expenditures, of all money collected or donated to the credit of the library fund, of the renting and construction of any library building, and the supervision, care and custody of the grounds, rooms or buildings constructed, leased or set apart for that purpose.

Source: Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 421; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-207.

51-208 Library board; use of library for city or school purposes; contracts.

The library board of any public library may contract with the city council of any city, with the trustees of any incorporated village, with the county board of the county in which such library is located or of any adjacent county, or with the directors of any school district, to furnish the use and privilege of its library to the inhabitants of such city, village, county, township or school district, to the extent and upon such terms as may be agreed upon.

Source: Laws 1911, c. 73, § 4, p. 315; R.S.1913, § 3795; C.S.1922, § 3188; Laws 1923, c. 148, § 1, p. 363; Laws 1925, c. 38, § 1, p. 149; C.S.1929, § 51-204; Laws 1941, c. 103, § 1, p. 422; C.S.Supp.,1941, § 51-204; R.S.1943, § 51-208.

51-209 Public library; funds; disbursements; sinking fund; bonds.

All taxes levied or collected and all funds donated or in any way acquired for the erection, maintenance, or support of any public library shall be kept for the use of the library separate and apart from all other funds of the city, village, county, or township, shall be drawn upon and paid out by the treasurer of such

city, village, county, or township upon vouchers signed by the president of the library board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner.

The city, village, county, or township may establish a public library sinking fund for major capital expenditures.

The county may issue bonds for library purposes pursuant to Chapter 10.

Source: Laws 1911, c. 73, § 5, p. 315; R.S.1913, § 3796; C.S.1922, § 3189; C.S.1929, § 51-205; R.S.1943, § 51-209; Laws 1997, LB 250, § 20.

51-210 Library board; building sites; acquisition; procedure.

Every library board created under sections 51-201 to 51-219 shall have power to purchase or lease grounds, to exercise the power of eminent domain, and to condemn real estate for the purpose of securing a site for a library building. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

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, § 51-210; Laws 1951, c. 101, § 100, p. 494; Laws 1971, LB 560, § 1; Laws 1997, LB 250, § 21.

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.

51-212 Public library; use and purpose.

Except as provided in section 51-211, every library and reading room supported by public tax shall be forever free to the use of the inhabitants of the city, village, county, or township maintaining such library, subject always to such reasonable regulations as the library board may adopt to render such library of the greatest use to the inhabitants of the city, village, county, or township. The board may exclude from the use of the library and reading rooms any person who willfully violates or refuses to comply with rules and regulations established for the government thereof.

Source: Laws 1911, c. 73, § 7, p. 316; R.S.1913, § 3798; C.S.1922, § 3191; C.S.1929, § 51-207; R.S.1943, § 51-212; Laws 1990, LB 1236, § 3.

51-213 Library board; annual report; contents.

The library board shall, on or before the second Monday in February in each year, make a report to the city council or village board or to the county or township board of the condition of its trust on the last day of the prior fiscal year. The report shall show all money received and credited or expended; the number of materials held, including books, video and audio materials, software programs, and materials in other formats; the number of periodical subscriptions on record, including newspapers; the number of materials added and the number withdrawn from the collection during the year; the number of materials circulated during the year; and other statistics, information, and suggestions as the library board may deem of general interest or as the city council or village, county, or township board may require. The report shall be verified by affidavit of the proper officers of the library board.

Source: Laws 1911, c. 73, § 8, p. 316; R.S.1913, § 3799; C.S.1922, § 3192; C.S.1929, § 51-208; R.S.1943, § 51-213; Laws 2004, LB 936, § 1.

51-214 Penalties; action to recover; disposition of funds collected.

Penalties imposed or accruing by any bylaw or regulation of the library board and any court costs and attorney's fees may be recovered in a civil action before any court having jurisdiction, such action to be instituted in the name of the library board of the city, village, county, or township. Money, other than any court costs and attorney's fees, collected in such actions shall be forthwith placed in the treasury of the city, village, township, or county to the credit of the city, village, township, or county library fund. Attorney's fees collected pursuant to this section shall be placed in the treasury of the city, village, or county and credited to the budget of the city, village, or county attorney's office. All attorney's fees collected on behalf of a township shall be paid over to the county treasury and credited to the budget of the county attorney's office.

Source: Laws 1911, c. 73, § 9, p. 317; R.S.1913, § 3800; C.S.1922, § 3193; C.S.1929, § 51-209; R.S.1943, § 51-214; Laws 1972, LB 1032, § 256; Laws 1984, LB 229, § 1.

51-215 Public library; donations; library board may accept.

Any person may make donation of money, lands or other property for the benefit of any public library. The title to property so donated may be made to

and shall vest in the library board of such library and their successors in office, and the board shall thereby become the owners thereof in trust to the uses of the public library of the city, village, township or county.

Source: Laws 1911, c. 73, § 10, p. 317; R.S.1913, § 3801; C.S.1922, § 3194; C.S.1929, § 51-210; Laws 1937, c. 123, § 1, p. 434; Laws 1941, c. 103, § 2, p. 422; C.S.Supp.,1941, § 51-210; R.S.1943, § 51-215.

51-216 Real estate; sale and conveyance; conditions; remonstrance; procedure.

The library board may, by resolution, direct the sale and conveyance of any real estate owned by the library board or by the public library, which is not used for library purposes, or of any real estate so donated or devised to the library board or to the public library upon such terms as the library board may deem best. Before any such sale is made the library board shall advertise such sale once each week for three consecutive weeks in a legal newspaper published or, if none is published, of general circulation in the city, village, township, or county in which the public library is situated, and such notice shall set out the time, place, terms, manner of sale, legal description of such real estate, and the right to reject any and all bids. If such bid or bids have not been rejected, then the real estate shall be sold to the highest bidder for cash, and the chairperson of the library board, upon resolution of the library board directing him or her so to do, shall convey such real estate to the purchaser of such real estate upon his or her payment of his or her bid. If within thirty days after the third publication of such notice a remonstrance against such sale is signed by thirty percent of the registered voters of such city, village, township, or county voting at the last regular city, village, or county election and is filed with the governing body of such city, village, township, or county, such property shall not then, nor within one year thereafter, be sold. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day.

Source: Laws 1937, c. 123, § 1, p. 434; Laws 1941, c. 103, § 2, p. 422; C.S.Supp.,1941, § 51-210; R.S.1943, § 51-216; Laws 1986, LB 960, § 34; Laws 1993, LB 59, § 4.

51-217 Public library; use by school districts.

Any school district may in its discretion at its annual meeting, by a majority vote, authorize the school board to contract for the use of a public library by the inhabitants of such district.

Source: Laws 1911, c. 73, § 11, p. 317; R.S.1913, § 3802; C.S.1922, § 3195; C.S.1929, § 51-211; R.S.1943, § 51-217.

51-218 Public library; property; exemption from execution and taxation; when.

The property of any public library shall be exempt from execution and shall be exempt from taxation to the extent it is used for a public purpose.

Source: Laws 1911, c. 73, § 12, p. 317; R.S.1913, § 3803; C.S.1922, § 3196; C.S.1929, § 51-212; R.S.1943, § 51-218; Laws 2001, LB 173, § 16.

51-219 Private and associate libraries; deposit and use; authorized; requirements.

The library board shall have power to authorize any circulating library, reading matter, or work of art belonging to any private person, association or corporation, to be deposited in the public library rooms, to be drawn or used outside of the rooms only on payment of such fee or membership as the person, corporation or association owning the same may require. Deposits may be removed by the owner thereof at pleasure, but the books or other reading matter so deposited in the rooms of any such public library shall be separately and distinctly marked and kept upon shelves apart from the books of the public city or town library. Every such private or associate library or other property so deposited in any public library, while so placed or remaining, shall, without charge, be subject to use and reading within the library room by any person who is an inhabitant of such city or town and entitled to the use of the free library.

Source: Laws 1911, c. 73, § 13, p. 318; R.S.1913, § 3804; C.S.1922, § 3197; C.S.1929, § 51-213; R.S.1943, § 51-219.

51-220 Law library; establishment; maintenance; supervision.

The county board may, when in its discretion it shall deem it advisable, provide by purchase or otherwise for the procuring and maintaining of a suitable law library for the use of the public. Such library shall be under the supervision of the judges of the district court of the county wherein the same is located.

Source: Laws 1911, c. 73, § 1, p. 319; R.S.1913, § 3805; C.S.1922, § 3198; C.S.1929, § 51-214; R.S.1943, § 51-220; Laws 1961, c. 255, § 1, p. 749.

ARTICLE 3**COUNTY AND REGIONAL LIBRARIES**

Section

- 51-301. Repealed. Laws 1997, LB 250, § 26.
- 51-302. Repealed. Laws 1997, LB 250, § 26.
- 51-303. Repealed. Laws 1997, LB 250, § 26.
- 51-304. Repealed. Laws 1997, LB 250, § 26.
- 51-305. Repealed. Laws 1997, LB 250, § 26.
- 51-306. Repealed. Laws 1971, LB 95, § 2.
- 51-307. Repealed. Laws 1997, LB 250, § 26.
- 51-308. Repealed. Laws 1997, LB 250, § 26.
- 51-309. Repealed. Laws 1997, LB 250, § 26.
- 51-310. Repealed. Laws 1997, LB 250, § 26.
- 51-311. Repealed. Laws 1997, LB 250, § 26.
- 51-312. Repealed. Laws 1997, LB 250, § 26.
- 51-313. Repealed. Laws 1997, LB 250, § 26.
- 51-314. Repealed. Laws 1997, LB 250, § 26.
- 51-315. Repealed. Laws 1997, LB 250, § 26.
- 51-316. Repealed. Laws 1997, LB 250, § 26.
- 51-317. Repealed. Laws 1997, LB 250, § 26.
- 51-318. Repealed. Laws 1997, LB 250, § 26.
- 51-319. Repealed. Laws 1997, LB 250, § 26.

51-301 Repealed. Laws 1997, LB 250, § 26.

51-302 Repealed. Laws 1997, LB 250, § 26.

- 51-303 Repealed. Laws 1997, LB 250, § 26.
- 51-304 Repealed. Laws 1997, LB 250, § 26.
- 51-305 Repealed. Laws 1997, LB 250, § 26.
- 51-306 Repealed. Laws 1971, LB 95, § 2.
- 51-307 Repealed. Laws 1997, LB 250, § 26.
- 51-308 Repealed. Laws 1997, LB 250, § 26.
- 51-309 Repealed. Laws 1997, LB 250, § 26.
- 51-310 Repealed. Laws 1997, LB 250, § 26.
- 51-311 Repealed. Laws 1997, LB 250, § 26.
- 51-312 Repealed. Laws 1997, LB 250, § 26.
- 51-313 Repealed. Laws 1997, LB 250, § 26.
- 51-314 Repealed. Laws 1997, LB 250, § 26.
- 51-315 Repealed. Laws 1997, LB 250, § 26.
- 51-316 Repealed. Laws 1997, LB 250, § 26.
- 51-317 Repealed. Laws 1997, LB 250, § 26.
- 51-318 Repealed. Laws 1997, LB 250, § 26.
- 51-319 Repealed. Laws 1997, LB 250, § 26.

ARTICLE 4

NEBRASKA LIBRARY COMMISSION

(a) NEBRASKA LIBRARY COMMISSION

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| Section | |
| 51-401. | Nebraska Library Commission; members; term. |
| 51-402. | Nebraska Library Commission; expenses; payment. |
| 51-403. | Nebraska Library Commission; powers and duties; director; appointment; salary. |
| 51-403.01. | Repealed. Laws 1959, c. 266, § 1. |
| 51-403.02. | Repealed. Laws 1963, c. 341, § 1. |
| 51-403.03. | Nebraska Library Commission; director; salary increase; when effective. |
| 51-404. | Director; duties. |
| 51-405. | Local libraries, agencies, or organizations; entitled to services, when. |
| 51-406. | Books; loans to libraries. |
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| 51-408. | Nebraska Library Commission; assistance to local libraries. |
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| 51-410. | Nebraska Library Commission; disbursements; power of director. |
| 51-410.01. | Nebraska Library Commission Cash Fund; created; how funded. |

(b) NEBRASKA PUBLICATIONS CLEARINGHOUSE

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| 51-411. | Terms, defined. |
| 51-412. | Nebraska Publications Clearinghouse; created; duties; rules and regulations. |
| 51-413. | State agencies; publications; filing with Nebraska Publications Clearinghouse. |

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51-414.	Depository contracts; standards; establish.
51-415.	Official list of publications; publish; contents.
51-416.	Current state publications; furnish.
51-417.	Distribution of state publications; restriction.
51-418.	Interlibrary loan service; provide.

(a) NEBRASKA LIBRARY COMMISSION

51-401 Nebraska Library Commission; members; term.

A Nebraska Library Commission is hereby established composed of six members to be appointed by the Governor, one to serve one year, one for two years, one for three years, one for four years, and one for five years, and thereafter the Governor shall appoint a new member annually to serve for a term of three years and no person shall be appointed to more than two successive terms. The new member provided for by this section shall be appointed for an initial term of three years. The term of one of the three members whose term expires in 1981 shall expire in 1980. That member shall be selected by lot.

Source: Laws 1935, c. 115, § 1, p. 370; C.S.Supp.,1941, § 51-501; R.S. 1943, § 51-401; Laws 1972, LB 1033, § 4; Laws 1979, LB 352, § 1.

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.

51-403 Nebraska Library Commission; powers and duties; director; appointment; salary.

The powers and duties of the Nebraska Library Commission shall be (1) to make rules and regulations not inconsistent with law for its government and operations, (2) to appoint a director, at a salary to be fixed by the commission, who shall be a technically trained, qualified, and experienced librarian, a graduate of an American Library Association accredited library school, to administer the work of the commission as hereinafter specified, (3) to authorize the director to employ such assistance as may be necessary to properly carry out the requirements of sections 51-401 to 51-410, (4) to be responsible for the statewide promotion, development, and coordination of library programs and services in accordance with nationally acceptable library standards, (5) to receive, as the legally designated state governmental agency, federal library funds which by federal law are to be dispersed within the state by a prescribed formula, (6) to accept and administer any gifts, bequests, and legacies which, in the opinion of the director and the commission, may be of value to it, and (7) to make a biennial report for the past two fiscal years to the Governor of its

activities and the progress of its work on or before December 15 in each even-numbered year.

Source: Laws 1935, c. 115, § 3, p. 370; Laws 1937, c. 124, § 1, p. 435; C.S.Supp.,1941, § 51-503; R.S.1943, § 51-403; Laws 1945, c. 238, § 21, p. 713; Laws 1951, c. 311, § 3, p. 1066; Laws 1951, c. 171, § 1, p. 659; Laws 1953, c. 178, § 1, p. 562; Laws 1955, c. 231, § 10, p. 721; Laws 1961, c. 256, § 1, p. 750; Laws 1965, c. 315, § 1, p. 878; Laws 1972, LB 1033, § 6; Laws 1983, LB 369, § 3.

51-403.01 Repealed. Laws 1959, c. 266, § 1.

51-403.02 Repealed. Laws 1963, c. 341, § 1.

51-403.03 Nebraska Library Commission; director; salary increase; when effective.

Section 51-403 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for the director of the Nebraska Library Commission; and to permit a change of such salary as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1965, c. 315, § 2, p. 879; Laws 1972, LB 1033, § 7.

51-404 Director; duties.

It shall be the duty of the director of the commission (1) to administer the work and activities of the commission, (2) to purchase books, periodicals, other library materials, and all necessary equipment and supplies for the commission, (3) to keep a catalog of all books, periodicals and other library materials belonging to the commission, (4) to keep a record of all books and property added to the library of the commission, and the cost thereof, (5) to keep a record of all books, periodicals and other library materials loaned by the commission and notify the borrowers of the expiration period of the loan, and (6) to keep fiscal and other operational records in accordance with state regulations.

Source: Laws 1935, c. 115, § 4, p. 371; C.S.Supp.,1941, § 51-504; R.S. 1943, § 51-404; Laws 1972, LB 1033, § 8.

51-405 Local libraries, agencies, or organizations; entitled to services, when.

Any library, governmental agency, or any body of citizens or taxpayers organized for library purposes shall, upon complying with the rules prescribed by the Nebraska Library Commission, be entitled to the commission's services.

Source: Laws 1935, c. 115, § 5, p. 371; C.S.Supp.,1941, § 51-505; R.S. 1943, § 51-405; Laws 1972, LB 1033, § 9.

51-406 Books; loans to libraries.

Any books, collection of books or other property of the Nebraska Library Commission may be loaned to any library, under such rules for the safekeeping,

preservation, care, handling and management of the same as may be fixed by the Nebraska Library Commission.

Source: Laws 1935, c. 115, § 6, p. 371; C.S.Supp.,1941, § 51-506; R.S. 1943, § 51-406; Laws 1972, LB 1033, § 10.

51-407 Nebraska Library Commission; reports from all libraries required.

The director shall each year obtain from all libraries in the state reports showing the conditions, growth, development and manner of conducting such libraries, together with such other facts and statistics regarding the same as may be deemed of public interest by the Nebraska Library Commission.

Source: Laws 1935, c. 115, § 7, p. 371; C.S.Supp.,1941, § 51-507; R.S. 1943, § 51-407; Laws 1972, LB 1033, § 11.

51-408 Nebraska Library Commission; assistance to local libraries.

The director shall when asked give advice and instruction to all libraries or individuals and to all communities which may propose to establish libraries as to the best means for establishing, organizing and administering such libraries, selecting and cataloging books, and other duties of library management. The director shall, so far as possible, promote and assist by counsel and encouragement the formation of libraries where none exist, and the director may send one of his employees or assistants to aid in organizing new libraries or improving those already established.

Source: Laws 1935, c. 115, § 8, p. 371; C.S.Supp.,1941, § 51-508; R.S. 1943, § 51-408; Laws 1972, LB 1033, § 12.

51-409 Repealed. Laws 1981, LB 497, § 1.

51-410 Nebraska Library Commission; disbursements; power of director.

The director may from time to time as needed draw a voucher signed by himself in favor of any party to whom money is due, stating in such voucher what the money is to be used for. Upon presentation of such order the Director of Administrative Services shall draw his warrant upon the State Treasurer for the amount thereof, not exceeding the amount of the appropriation for the purposes of the Nebraska Library Commission.

Source: Laws 1935, c. 115, § 10, p. 372; C.S.Supp.,1941, § 51-510; R.S.1943, § 51-410; Laws 1972, LB 1033, § 14.

51-410.01 Nebraska Library Commission Cash Fund; created; how funded.

There is hereby created a fund to be known as the Nebraska Library Commission Cash Fund, from which shall be appropriated such amounts as are available and as shall be considered incident to the administration of the Nebraska Library Commission. All funds received by the Nebraska Library Commission for services rendered shall be paid into the state treasury and the State Treasurer shall credit the money to the Nebraska Library Commission Cash Fund.

Source: Laws 1975, LB 550, § 1.

(b) NEBRASKA PUBLICATIONS CLEARINGHOUSE

51-411 Terms, defined.

As used in sections 51-411 to 51-418, unless the context otherwise requires:

(1) Print shall include all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda;

(2) State publications shall include any multiply produced publications printed or purchased for distribution by the state, the Legislature, constitutional officers, any state department or committee, or any other state agency supported wholly or in part by state funds;

(3) State agency shall include every state office, officer, department, division, bureau, board, commission, and agency of the state and, when applicable, all subdivisions of each, including state institutions of higher education defined as all state-supported colleges and universities; and

(4) Governmental publications shall include any publications of associations, regional organizations, intergovernmental bodies, federal agencies, boards, and commissions, or other publishers that may contribute supplementary materials to support the work of the state Legislature and state agencies.

Source: Laws 1972, LB 1284, § 1; Laws 1988, LB 802, § 3.

51-412 Nebraska Publications Clearinghouse; created; duties; rules and regulations.

There is hereby created, as a division of the Nebraska Library Commission, a Nebraska Publications Clearinghouse. The clearinghouse shall establish and operate a publications collection and depository system for the use of Nebraska citizens. To this end, the Nebraska Library Commission shall adopt and promulgate such rules and regulations as shall be necessary to carry out sections 51-411 to 51-418.

Source: Laws 1972, LB 1284, § 2; Laws 1988, LB 802, § 4.

51-413 State agencies; publications; filing with Nebraska Publications Clearinghouse.

Every state agency head or his or her appointed records officer shall notify the Nebraska Publications Clearinghouse of his or her identity. The records officer shall upon release of a state publication deposit four copies and a short summary, including author, title, and subject, of each of its state publications with the Nebraska Publications Clearinghouse for record purposes. One of these copies shall be forwarded by the clearinghouse to the Nebraska State Historical Society for archival purposes and one to the Library of Congress. Additional copies, including sale items, shall also be deposited in the Nebraska Publications Clearinghouse in quantities certified to the agencies by the clearinghouse as required to meet the needs of the Nebraska publications depository system, with the exception that the University of Nebraska Press shall only be required to deposit four copies of its publications.

Source: Laws 1972, LB 1284, § 3; Laws 1979, LB 322, § 80; Laws 1989, LB 18, § 4.

51-414 Depository contracts; standards; establish.

The Nebraska Publications Clearinghouse may enter into depository contracts with any municipal or county public library, state college or state university library, and out-of-state research libraries. The requirements for eligibility to contract as a depository library shall be established by the Nebraska Publications Clearinghouse. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

Source: Laws 1972, LB 1284, § 4; Laws 1997, LB 250, § 23.

51-415 Official list of publications; publish; contents.

The Nebraska Publications Clearinghouse shall publish and distribute regularly to contracting depository libraries, other libraries, state agencies and legislators, an official list of state publications with an annual cumulation. The official list shall provide a record of each agency's publishing and show author, agency, title and subject approaches.

Source: Laws 1972, LB 1284, § 5.

51-416 Current state publications; furnish.

Upon request by the Nebraska Publications Clearinghouse, records officers of state agencies shall furnish the clearinghouse with a complete list of their current state publications.

Source: Laws 1972, LB 1284, § 6.

51-417 Distribution of state publications; restriction.

The Nebraska Publications Clearinghouse shall not engage in general public distribution of either state publications or lists of publications. Sections 51-411 to 51-418 shall not affect the distribution of state publications distributed by state agencies, except that the agencies shall deposit in the Nebraska Publications Clearinghouse the number of copies of each of their state publications certified by the clearinghouse.

Source: Laws 1972, LB 1284, § 7; Laws 1988, LB 802, § 5.

51-418 Interlibrary loan service; provide.

The Nebraska Publications Clearinghouse shall provide access to local, state, federal and other governmental publications to state agencies and legislators and through interlibrary loan service to citizens of the state.

Source: Laws 1972, LB 1284, § 8.

ARTICLE 5

MUSEUMS

Cross References

City of the metropolitan class, landmark heritage preservation commission, see sections 14-2001 to 14-2004.

Historical, archeological, and paleontological remains, Department of Roads enter into agreements to preserve, see section 39-1363.

Monuments and markers, county markers, see sections 23-351 to 23-355.

Nebraska State Historical Society, see sections 82-101 to 82-132.

Nonprofit county historical association or society, tax levy, see section 23-355.01.

State historical parks, see sections 37-337 to 37-348.

Section

51-501. Museums; local governmental subdivisions; establishment; tax levy; limitation; authorization by election; discontinuance.

- Section
- 51-502. Museums; city or village; establishment; museum board; members; terms; vacancy, how filled.
- 51-503. Museums; county or township; establishment; museum board; members; terms; vacancies, how filled; compensation.
- 51-504. Museums; trustees; officers; appointment; meetings; quorum.
- 51-505. Museums; board; powers.
- 51-506. Museums; board; finances; care of building.
- 51-507. Museums; funds; disbursement; acquisition from private sources; kept separate and apart; manner of disbursement.
- 51-508. Museums; public use; admission charges; rules and regulations.
- 51-509. Museums; board; report; contents.
- 51-510. Museums; gifts and devises; title in trust; revenue bonds; payment.
- 51-511. Museum; conveyance of real estate or other property; procedure; applicability of section.
- 51-512. Museums; property; exempt from execution and taxation.
- 51-513. Museums; revenue bonds; purpose; issuance; payable; sale; refunding.

51-501 Museums; local governmental subdivisions; establishment; tax levy; limitation; authorization by election; discontinuance.

(1) The city council of any city, the board of trustees of any incorporated village, the county board of any county, and the electors of any township at their annual town meeting shall have the power to establish a museum for the use of the inhabitants of such city, village, county, or township or to contract for the use of a museum already established and may levy a tax of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within the city, village, township, or county to be levied each year and collected in like manner as other taxes in such city, village, county, or township and to be known as the museum fund. The levy shall be part of the levy of the city, village, county, or township and shall be subject to sections 77-3442 and 77-3443.

(2) When the county board makes a levy for a county museum, it shall omit from the levy of the museum tax all property within the limits of any city, village, or township in such county which already maintains a museum by public tax. Before establishing such county museum or levying such tax, the county board shall submit the question to the voters of the county and a majority of the voters voting thereon shall have authorized the establishment of such county museum and the levying of the tax. Such questions shall be submitted at a general election only, and when so submitted and carried, it is hereby made the duty of the county board to include the county museum in its next succeeding estimate and levy.

(3) The electors of the county may discontinue such levy by vote of the people in the same manner that the initial levy was authorized, except that the proposition to discontinue such levy shall be placed on the ballot by the county board of such county at a general election only when requested to do so by a petition signed by at least twenty percent of the legal voters of such county based on the total vote cast for Governor at the last general election in the county.

Source: Laws 1957, c. 224, § 1, p. 766; Laws 1979, LB 187, § 180; Laws 1992, LB 719A, § 156; Laws 1996, LB 1114, § 62; Laws 1997, LB 269, § 31; Laws 1998, LB 306, § 6.

Cross References

For other provisions for establishment of museums:

Cities of the first class, see section 16-251.
 Cities of the metropolitan class, see section 14-102.

The county board was permitted under this section to provide for the establishment of a museum to be constructed by public-donated funds and to levy a tax for the maintenance of the museum thereafter. *Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board*, 186 Neb. 615, 185 N.W.2d 671 (1971).

51-502 Museums; city or village; establishment; museum board; members; terms; vacancy, how filled.

A city or village may establish and maintain a museum pursuant to sections 51-501 to 51-513 when approved by at least fifty-one percent of the votes cast at the election by the electors of the city or village voting on the proposition. Notwithstanding the provisions of any home rule charter to the contrary, any city or village which established a museum prior to April 10, 1957, or any city or village contracting for the use of a museum already established shall not be required to hold an election to contract for or to establish and maintain such a museum for any term of years deemed necessary or advisable by such city or village. When the electors of a city or village approve the establishment and the maintenance of a museum pursuant to sections 51-501 to 51-513, the city council or village board shall establish and maintain a museum pursuant to such sections. Such city or village shall appoint a museum board of not less than five but not more than nine members to be chosen from the citizens of the city or village at large. Except as further provided in this section, neither the mayor nor any member of the city council or village board shall be a member of the museum board. The members of the museum board first appointed shall hold office, the first for a term of one year, the second for a term of two years, the third for a term of three years, the fourth for a term of four years, the fifth for a term of five years, the sixth for a term of one year, the seventh for a term of two years, the eighth for a term of three years, and the ninth for a term of four years from the first day of July following their appointment. As their terms expire, one member shall be chosen annually thereafter for a term of five years. In cases of vacancies by resignation, removal, or otherwise, the city council or village board shall fill such vacancy for the unexpired term. Cities having home rule charters may fix by ordinance the number of members of such museum board. No member shall receive any pay or compensation for any services rendered. However, the city council of any city or the board of trustees of any village which is contracting for the use of a museum already established shall be the museum board and may establish the city council or board of trustees as the museum board without regard to the requirements for terms and numbers of members on the board set forth in this section.

Source: Laws 1957, c. 224, § 2, p. 767; Laws 1963, c. 306, § 1, p. 903; Laws 1965, c. 316, § 1, p. 880; Laws 1989, LB 444, § 1.

51-503 Museums; county or township; establishment; museum board; members; terms; vacancies, how filled; compensation.

When the electors of any county or of any township shall have voted to establish and maintain a museum, the county board of such county or the township board of such township shall appoint a museum board of not less than five but not more than nine members, no member of which shall be a member of the county or township board, the five members of the museum board first appointed shall hold office, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, the sixth member shall be for a term of one

year, the seventh for a term of two years, the eighth for a term of three years, and the ninth for a term of four years, from the first day of July following their appointment; and as the terms of the members expire, the county or township board shall appoint annually one trustee to serve for a term of five years. In case of vacancies, the county or township board shall have the power to fill the vacancy for the unexpired term. No trustee shall receive any pay or compensation for any services rendered as a member of such board.

Source: Laws 1957, c. 224, § 3, p. 768; Laws 1963, c. 306, § 2, p. 904; Laws 1965, c. 316, § 2, p. 881.

51-504 Museums; trustees; officers; appointment; meetings; quorum.

The trustees of any city, village, county, or township museum shall immediately after their appointment meet and organize by electing from their number a president, secretary and such other officers as may be necessary. Three members of the board shall constitute a quorum for the transaction of business.

Source: Laws 1957, c. 224, § 4, p. 769; Laws 1963, c. 306, § 3, p. 904.

51-505 Museums; board; powers.

The museum board shall have the power to make and adopt such bylaws, rules, and regulations for its own guidance and for the government of the museum as it may deem expedient and not inconsistent with the provisions of sections 51-501 to 51-512. The board shall have power to employ any and all personnel necessary for the operation of the museum and to fix their salaries.

Source: Laws 1957, c. 224, § 5, p. 769.

51-506 Museums; board; finances; care of building.

The museum board shall have exclusive control of expenditures, of all money collected or donated to the credit of the museum fund, of the renting or construction of a museum building and the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose.

Source: Laws 1957, c. 224, § 6, p. 769.

Because the vote establishing museum hereunder limited the tax levy to the maintenance of a museum constructed by public-donated funds, it was held that tax funds cannot be used for

construction purposes. Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board, 186 Neb. 615, 185 N.W.2d 671 (1971).

51-507 Museums; funds; disbursement; acquisition from private sources; kept separate and apart; manner of disbursement.

All taxes levied or collected shall be kept for the use of the museum, separate and apart from other funds of the city, village, county, or township. They shall be drawn upon and paid out by the treasurer of such city, village, county, or township upon vouchers signed by the president of the museum board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner. All funds donated or in any other way acquired from private sources, including paid memberships in a local museum association, for the erection, maintenance, or support of any museum shall be kept for the use of the museum, separate and apart from all other funds of the city, village, county or township. They shall be drawn upon and paid out by the treasurer of such museum board upon vouchers signed by the president

of the museum board and authenticated by the secretary of such board, and shall not be used or disbursed for any other purpose or in any other manner.

Source: Laws 1957, c. 224, § 7, p. 769; Laws 1963, c. 306, § 4, p. 905.

51-508 Museums; public use; admission charges; rules and regulations.

Every museum supported by public tax shall be open to the use of the public, subject to such reasonable regulations and admission charges as the museum board may adopt to render such museum of the greatest use to the public. The board may exclude from the use of the museum any person who shall willfully violate or refuse to comply with rules and regulations established for the government thereof. The power of the museum board under this section may be exercised by the other contracting party as set forth in a contract which has been entered into by a city or village for the use of a museum already established.

Source: Laws 1957, c. 224, § 8, p. 769; Laws 1963, c. 306, § 5, p. 905; Laws 1989, LB 444, § 2.

51-509 Museums; board; report; contents.

Except where a contract is entered into for the use of a museum already established, the museum board shall, on or before the second Monday in June in each year, make a report to the city council, village board, or to the county or township board as to the condition of its trust on June 1 of such year, showing all money received or expended and a general report on all its activities in the operation and supervision of the museum and any information and suggestions it may deem of general interest, or as the city council, village, county, or township board may require. The report shall be in writing and verified by affidavit of the proper officers of such board.

Source: Laws 1957, c. 224, § 9, p. 770; Laws 1989, LB 444, § 3.

Holding that the county had an interest in result of pending litigation and had standing to intervene on the question as to whether proceeds from a tax levy could be used to pay for construction costs based in part on this section. Geer-Melkus Constr. Co., Inc. v. Hall County Museum Board, 186 Neb. 615, 185 N.W.2d 671 (1971).

51-510 Museums; gifts and devises; title in trust; revenue bonds; payment.

Any person may make gifts or devises of money, lands, or other property to or for the benefit of any public museum. The title to property so donated or devised may be made to and shall vest in the museum board of such museum and their successors in office, and the board shall thereby become the owners thereof in trust to the uses of the museum of the city, village, county, or township, but such museum board may pledge and use any unrestricted gifts or devises for the payment of the principal of or the interest or redemption premium on any revenue bonds issued for the benefit of such museum.

Source: Laws 1957, c. 224, § 10, p. 770; Laws 1965, c. 316, § 3, p. 881.

51-511 Museum; conveyance of real estate or other property; procedure; applicability of section.

The museum board may, by resolution of the majority of the board, direct the sale, conveyance, or disposition of any real estate or other property owned by the museum board or by the museum upon such terms and conditions as the museum board deems in the best interest of the museum, except that the provisions of this section shall not include any items or property subject to the

Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq. The museum board shall properly document the sale, conveyance, or disposition of any real estate or other property, including a brief description of the real estate or other property, the disposition made, the name of the recipient of the real estate or other property, the amount tendered or a description and stated value of real estate or other property received in exchange, and the date of the transaction. All funds derived from such sales shall be deposited in the museum fund and kept for use by the museum separate and apart from other funds of the city, village, county, or township as authorized by section 51-507.

Source: Laws 1957, c. 224, § 11, p. 770; Laws 1986, LB 960, § 35; Laws 1993, LB 750, § 1; Laws 1993, LB 59, § 5.

Cross References

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

51-512 Museums; property; exempt from execution and taxation.

The property of any public museum, including the museum property of a contracting party set forth in a contract with a city or village for the use of a museum already established, shall be exempt from execution and taxation, as is other public property.

Source: Laws 1957, c. 224, § 12, p. 771; Laws 1989, LB 444, § 4.

51-513 Museums; revenue bonds; purpose; issuance; payable; sale; refunding.

The city council of any city, the board of trustees of any incorporated village, the county board of any county and the electors of any township at their annual town meeting, who have established a museum pursuant to the provisions of sections 51-501 to 51-503, shall have the power to issue revenue bonds for the purpose of (1) purchasing and improving a site or sites for the location of a museum or museum buildings, structures or educational or historical exhibits, (2) erecting museum buildings, structures and educational or historical exhibits, (3) acquiring historical collections and other museum items, (4) acquiring furniture, furnishings and equipment for any of the foregoing, or (5) paying any outstanding notes, obligations, or other indebtedness incurred in connection with the museum. Such revenue bonds shall be payable solely from the admission charges authorized by section 51-508, nontax revenue received from the operation of such museum, or from unrestricted gifts, devises, or other property and funds of such museum. Such bonds shall be of such tenure, form, and denominations, be payable in such installments, at such time or times not exceeding forty years from their date, and at such place or places, bear interest at such rate or rates payable at such place or places and evidenced in such manner, be redeemable prior to maturity with or without premium, and contain such other provisions not inconsistent with the provisions of this section as the governing body of the issuing city, village, county or township shall determine. All bonds issued under the authority of this section and all interest coupons applicable thereto shall be construed to be negotiable instruments despite the fact that they are payable solely from a specified source. Such bonds may be sold at public or private sale in such manner and at such times as may be determined by the governing body of the issuer. Any bonds issued under

the provisions of this section and at any time outstanding may at any time and from time to time be refunded by the issuing agency by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums necessary to be paid in connection therewith. Such refunding may be either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby.

Source: Laws 1965, c. 466, § 1, p. 1508.

ARTICLE 6

ANTIQUÉ FARM MACHINERY AND EQUIPMENT

Section

- 51-601. Repealed. Laws 2004, LB 940, § 4.
- 51-602. Repealed. Laws 2004, LB 940, § 4.
- 51-603. Repealed. Laws 2004, LB 940, § 4.
- 51-604. Repealed. Laws 2004, LB 940, § 4.
- 51-605. Repealed. Laws 2004, LB 940, § 4.
- 51-606. Repealed. Laws 2004, LB 940, § 4.
- 51-607. Repealed. Laws 2004, LB 940, § 4.

51-601 Repealed. Laws 2004, LB 940, § 4.

51-602 Repealed. Laws 2004, LB 940, § 4.

51-603 Repealed. Laws 2004, LB 940, § 4.

51-604 Repealed. Laws 2004, LB 940, § 4.

51-605 Repealed. Laws 2004, LB 940, § 4.

51-606 Repealed. Laws 2004, LB 940, § 4.

51-607 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 7

MUSEUM PROPERTY ACT

Section

- 51-701. Act, how cited.
- 51-702. Terms, defined.
- 51-703. Notice; contents.
- 51-704. Acquisition of title to loaned property; when.
- 51-705. Acquisition of title to undocumented property; when.
- 51-706. Preservation of interest in loaned property; notice; contents.
- 51-707. Conservation measures; authorized; effect.
- 51-708. Limitation of actions; liability.
- 51-709. Obligations to lender or claimant.
- 51-710. Records; maintenance and retention.
- 51-711. Lender or claimant; duty to notify museum; when.
- 51-712. Death of owner of property; effect.

51-701 Act, how cited.

Sections 51-701 to 51-712 shall be known and may be cited as the Museum Property Act.

Source: Laws 1996, LB 1276, § 1.

51-702 Terms, defined.

For purposes of the Museum Property Act:

- (1) Claimant means a person who files a notice of intent to preserve an interest in property on loan to a museum as provided in section 51-706;
- (2) Claimant's address means the most recent address as shown on a notice of intent to preserve an interest in property on loan to a museum or notice of change of address, which notice is on file with the museum;
- (3) Lender means a person whose name appears on the records of the museum as the person legally entitled to or claiming to be legally entitled to property held by the museum;
- (4) Lender's address means the most recent address as shown on the museum's records pertaining to the property on loan from the lender;
- (5) Loan means a deposit of property not accompanied by a transfer of permanent title to the property;
- (6) Museum means an institution located in Nebraska and operated by a nonprofit corporation or a public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, and zoos;
- (7) Permanent loan means a loan of property to a museum for an indefinite period;
- (8) Property means a tangible object, animate or inanimate, under a museum's care, which has intrinsic historic, artistic, scientific, or cultural value; and
- (9) Undocumented property means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records.

Source: Laws 1996, LB 1276, § 2.

51-703 Notice; contents.

- (1) In addition to any other information prescribed for a particular notice, each notice given pursuant to the Museum Property Act shall contain the following information:
 - (a) The lender's or claimant's name as appropriate;
 - (b) The lender's last-known address or the claimant's last-known address as appropriate;
 - (c) A brief description of the property on loan;
 - (d) The date of the loan, if known;
 - (e) The name of the museum; and
 - (f) The name, address, and telephone number of the appropriate person or office to be contacted regarding the property.
- (2) Each notice given by a museum pursuant to the act shall be mailed to the lender's and any claimant's last-known address by restricted certified mail. Notice is deemed given if the museum receives proof of receipt within thirty days after mailing the notice.
- (3) Notice may be given by publication if the museum does not:

- (a) Know the identity of the lender;
 - (b) Have the address or telephone number for the lender or the address or telephone number for the claimant; or
 - (c) Receive proof of receipt of the notice by the person to whom the notice was sent within thirty days after the notice was mailed.
- (4) Notice by publication must be given at least once each week for three consecutive weeks in a newspaper of general circulation in both the county where the museum is located and the county of the lender's or claimant's address, if any.

Source: Laws 1996, LB 1276, § 3.

51-704 Acquisition of title to loaned property; when.

Subject to any existing security interest in the property, a museum may acquire title to property on permanent loan or loaned for a specified term that has expired if:

- (1) The museum gives written notice that the museum is terminating the loan of the property;
- (2) The notice that the loan of the property is being terminated includes a statement containing substantially the following information:

The records of (name of museum) indicate that you have property on loan to it. The institution wishes to terminate the loan. If you desire to claim the property, you must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution; and

- (3) The lender does not respond to the notice of termination provided under subdivision (1) of this section within one year after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan.

Source: Laws 1996, LB 1276, § 4.

51-705 Acquisition of title to undocumented property; when.

Subject to any existing security interest in the property, a museum may acquire title to undocumented property held by the museum for at least seven years as follows:

- (1) The museum must give notice as provided in subsection (3) of section 51-703 that the museum is asserting title to the undocumented property;
- (2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within three years, you will be considered to have waived any claim you may have had to the property; and

- (3) If a claimant or lender does not respond to the notice provided in subdivision (2) of this section within three years by giving a written notice of

intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

Source: Laws 1996, LB 1276, § 5.

51-706 Preservation of interest in loaned property; notice; contents.

(1) A notice of intent to preserve an interest in property on loan to a museum filed pursuant to the Museum Property Act shall be in writing and contain all of the following information:

(a) A description of the property adequate to enable the museum to identify the property;

(b) Documentation sufficient to establish the claimant as owner of the property or a holder of a security interest in the property;

(c) A statement attesting to the truth, to the best of the signer's knowledge, of all information included in or with the notice; and

(d) The signature, under penalty of perjury, of the claimant or a person authorized to act on behalf of the claimant.

(2) The museum need not retain a notice which does not meet the requirements set forth in subsection (1) of this section. If the museum does not intend to retain a notice for this reason, the museum shall promptly notify the claimant at the address given on the notice that the museum believes the notice is ineffective to preserve an interest and the reasons for the insufficiency. The fact that a museum retains a notice under section 51-710 does not mean that the museum accepts the sufficiency or accuracy of the notice or that the notice is effective to preserve an interest in property on loan to the museum.

Source: Laws 1996, LB 1276, § 6.

51-707 Conservation measures; authorized; effect.

(1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to loaned property if immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or the property on loan has become a hazard to the health and safety of the public or of the museum's staff, and:

(a) The museum cannot reach the lender at the lender's last address of record so that the museum and the lender can promptly agree on a solution; or

(b) The lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures under subsection (1) of this section, the museum:

(a) Has a lien on the property and on the proceeds from any disposition of the property for the costs incurred by the museum; and

(b) Is not liable for injury to or loss of the property if the museum:

(i) Had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff; and

(ii) Exercised reasonable care in the choice and application of the conservation measures.

Source: Laws 1996, LB 1276, § 7.

51-708 Limitation of actions; liability.

(1) An action shall not be brought against a museum for damages because of injury to or loss of property loaned to the museum more than three years from the date the museum gives the lender or claimant notice of the injury or loss or ten years from the date of the injury or loss, whichever occurs earlier.

(2) An action shall not be brought against a museum to recover property on loan more than one year after the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of acquisition of title to undocumented property.

(3) An action shall not be brought against a museum to recover property on loan more than seven years from the date of the last written contact between the lender or claimant and the museum as evidenced by the museum's records.

(4) A lender or claimant is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the time periods specified in subsections (1) through (3) of this section.

(5) Notwithstanding subsections (3) and (4) of this section, a lender or claimant who was not given notice as provided in the Museum Property Act that the museum intended to terminate a loan as provided in section 51-704 and who proves that the museum received an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of section 51-706, within the seven years immediately preceding the filing of an action to recover the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at the legal rate.

(6) A museum is not liable at any time, in the absence of a court order, for returning property to the original lender even if a claimant other than the lender has filed a notice of intent to preserve an interest in property. If a person claims competing interests in property in the possession of a museum, the burden is upon the claimant to prove the interest in an action in equity initiated by a claimant. A museum is not liable at any time for returning property to an uncontested claimant who produced reasonable proof of ownership or the existence of a security interest pursuant to section 51-706.

Source: Laws 1996, LB 1276, § 8.

51-709 Obligations to lender or claimant.

In order to take title pursuant to the Museum Property Act, a museum has the following obligations to a lender or claimant:

(1) The museum shall retain all written records regarding the property for at least three years after the date of taking title pursuant to the act;

(2) The museum shall keep written records on all loaned property acquired pursuant to section 51-704. Records shall contain the following information:

(a) The lender's name, address, and telephone number;

(b) The claimant's name, address, and telephone number;

- (c) The nature and terms of the loan; and
- (d) The beginning date of the loan period, if known; and
- (3) The museum is responsible for notifying a lender or claimant of the museum's change of address or dissolution.

Source: Laws 1996, LB 1276, § 9.

51-710 Records; maintenance and retention.

Beginning on July 19, 1996, a museum shall at a minimum maintain and retain the following records, either as originals or accurate copies, for a period of not less than twenty-five years:

- (1) A notice of intent to preserve an interest in property, if any;
- (2) The loan agreement, if any;
- (3) A receipt or ledger for property delivered to an owner or claimant; and
- (4) Records containing the following information, as available, for property in the museum's possession:
 - (a) The lender's name, address, and telephone number;
 - (b) The claimant's name, address, and telephone number;
 - (c) The donor's name, address, and telephone number;
 - (d) The seller's name, address, and telephone number;
 - (e) The nature and terms of the transaction (loan for specified term, loan for unspecified term, donation, purchase, etc.); and
 - (f) The beginning date of the loan period or transaction date.

Source: Laws 1996, LB 1276, § 10.

51-711 Lender or claimant; duty to notify museum; when.

(1) The lender or claimant of property on loan to a museum shall notify the museum of a change of address or change in ownership of the property. Failure to notify the museum of these changes may result in the lender's or claimant's loss of rights in the property.

(2) The lender or claimant of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property as provided for in section 51-706. The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim which would be extinguished under the terms of a written agreement or which would otherwise be invalid or unenforceable.

Source: Laws 1996, LB 1276, § 11.

51-712 Death of owner of property; effect.

Loaned property in the possession of a museum at the time of the owner's death which would otherwise escheat to the state shall not so escheat but shall become the property of the museum to which it is loaned.

Source: Laws 1996, LB 1276, § 12.

ARTICLE 8

PUBLIC LIBRARY FEDERATION

Section

- 51-801. Legislative findings.
- 51-802. Terms, defined.
- 51-803. Intracounty public library federation; establishment; board; members; terms; expenses.
- 51-804. Intercounty public library federation; establishment; board; members; terms; expenses.
- 51-805. Public library federation board; powers and duties.
- 51-806. Public library federation fund; establishment.
- 51-807. Affiliation with federation.
- 51-808. Annual report.
- 51-809. Title to property; exempt from taxation; when.
- 51-810. Withdrawal of affiliation.
- 51-811. Dissolution.

51-801 Legislative findings.

The Legislature finds and declares that public libraries are vital to the quality of life in Nebraska communities and that public libraries provide access to information resources for the personal, educational, and vocational needs of the citizens. The Legislature further finds that public library services can be improved by permitting creative and flexible means of library governance and organization. It is the intent of the Legislature to encourage cooperation and collaboration among political subdivisions to assure access to public library services for every Nebraskan.

Source: Laws 1999, LB 362, § 1.

51-802 Terms, defined.

For purposes of sections 51-801 to 51-811:

- (1) Basic public library services includes, but is not limited to, free loan of circulating print and nonprint materials from the local collection and general reference and information services;
- (2) Local governing authority means the governing body of a county, city, village, or township; and
- (3) Public library federation means a library service agency of one or more counties responsible for a planned program of library services to be provided through public libraries which choose to affiliate with the federation.

Source: Laws 1999, LB 362, § 2.

51-803 Intracounty public library federation; establishment; board; members; terms; expenses.

- (1) Upon the request of two or more local governing authorities within a county, the county board may establish a public library federation.
- (2) The county board shall appoint seven residents of the county to the public library federation board. At least four members of the public library federation board shall represent communities whose public libraries have affiliated with the federation. The members shall be appointed to broadly represent the county's population.

(3) Each member of the public library federation board shall serve a term of not less than three nor more than five years as determined by the county board, except that the terms of the initial appointments may vary in length so that terms will expire in a staggered fashion. If a vacancy exists, the unexpired term shall be filled by appointment by the county board.

(4) A member of the public library federation board shall not receive compensation for services rendered as a board member but may be reimbursed for actual and necessary expenses incurred in the performance of official duties from the public library federation fund.

Source: Laws 1999, LB 362, § 3.

51-804 Intercounty public library federation; establishment; board; members; terms; expenses.

(1) Upon the request of two or more local governing authorities within each of two or more adjoining counties, the county boards may jointly establish a public library federation.

(2) Each county board shall appoint two residents of the county to the public library federation board. At least one member from each county shall represent communities whose public libraries have affiliated with the federation. The members appointed by the county boards shall appoint an additional member. The members shall be appointed to broadly represent each county's population.

(3) Each member of the public library federation board shall serve a term of not less than three nor more than five years as jointly determined by the county boards, except that the terms of the initial appointments may vary in length so that terms will expire in a staggered fashion. If a vacancy exists in the membership from one of the participating counties, the unexpired term shall be filled by appointment by the appropriate county board.

(4) A member of the public library federation board shall not receive compensation for services rendered as a board member but may be reimbursed for actual and necessary expenses incurred in the performance of official duties from the public library federation fund.

Source: Laws 1999, LB 362, § 4.

51-805 Public library federation board; powers and duties.

(1) The public library federation board shall be responsible for the general governance of the public library federation, but affiliated libraries shall retain governance of all aspects of local library operations. The board shall make and adopt bylaws, rules, and regulations for the board's guidance and for the governance of the federation. The board shall develop a long-range public library service plan for the provision of public library service to the area included in the federation.

(2) The board may designate and determine the compensation of a library federation director. The director shall be responsible to the board only in relationship to federation operations.

(3) The board shall develop and present an annual budget in support of the annual public library plan to each participating county board. The public library federation board shall administer and authorize the expenditure of all money received from taxes and other sources in support of federation public library service.

(4) The board may contract with other public entities for services.

(5) The method of federating libraries provided in sections 51-801 to 51-811 shall not be the exclusive way to provide joint or cooperative library services. Nothing in sections 51-801 to 51-811 shall prohibit a county, city, village, or township from entering into an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act concerning library services.

Source: Laws 1999, LB 362, § 5; Laws 2000, LB 968, § 18.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

51-806 Public library federation fund; establishment.

Upon the establishment of a public library federation and a public library federation board, each participating county board shall establish a public library federation fund to be supported from the general fund of each participating local governing authority or from a public library tax levy. Any local governing authority which is not affiliated with the public library federation shall not be subject to the levy. The levy shall be subject to section 77-3442. The amount of tax support for the federation shall be subject to an agreement among the participating local governing authorities. All money received for the federation shall be remitted to the county treasurer for credit to the public library federation fund.

Source: Laws 1999, LB 362, § 6.

51-807 Affiliation with federation.

The local governing authority of each existing public library within a county participating in a public library federation shall either choose to affiliate with the federation or shall choose to exempt itself from the federation. A county, city, village, or township public library that chooses to affiliate with the federation shall agree to provide basic public library services free of charge to all residents within the federation area. Residents within the area of a public library that has chosen to exempt itself from the federation shall not be entitled to participate in programs of the public library federation. The public library board of a county, city, village, or township shall retain its authority and autonomy regardless of whether or not the public library is an affiliate of the federation.

Source: Laws 1999, LB 362, § 7.

51-808 Annual report.

The public library federation board shall submit an annual report of activities and operations to the Nebraska Library Commission and to the participating local governing authorities.

Source: Laws 1999, LB 362, § 8.

51-809 Title to property; exempt from taxation; when.

The title to property, equipment, and library materials of a public library federation acquired with funds of the public library federation shall be vested in the participating local governing authorities as reflected by an agreement entered into before the formation of the federation. The title to property,

equipment, and library materials of an affiliated public library shall remain in the affiliated public library. Removal or disposal of public library federation property shall be determined by the public library federation board. The property of any public library federation shall be exempt from execution and shall be exempt from taxation to the extent such property is used for a public purpose.

Source: Laws 1999, LB 362, § 9; Laws 2001, LB 173, § 17.

51-810 Withdrawal of affiliation.

An affiliate of a public library federation may, by a two-thirds majority vote of the local governing authority, withdraw from affiliation with the federation after giving one year's notice.

Source: Laws 1999, LB 362, § 10.

51-811 Dissolution.

A public library federation may, by a two-thirds majority vote of the library federation board, be dissolved after one year's notice. In the event of the dissolution of a public library federation, the participating local governing authorities shall determine the disposition of all federation assets on a prorated basis to affiliated public libraries.

Source: Laws 1999, LB 362, § 11.

LIENS

CHAPTER 52
LIENS

Article.

1. Construction Lien.
 - (a) Miscellaneous. 52-101 to 52-124.
 - (b) Nebraska Construction Lien Act. 52-125 to 52-159.
2. Artisan's Lien. 52-201 to 52-204.
3. Jeweler's Lien. 52-301 to 52-304.
4. Lien of Physician, Nurse, or Hospital. 52-401, 52-402.
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7. Veterinarian's Lien. 52-701, 52,702.
8. Sale of Goods to Pay for Services Rendered Thereon or for Storage. 52-801 to 52-806.
9. Petroleum Products Lien. 52-901 to 52-905.
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11. Fertilizer and Agricultural Chemical Liens. 52-1101 to 52-1104.
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13. Filing System for Farm Product Security Interests. 52-1301 to 52-1322.
14. Agricultural Production Liens. 52-1401 to 52-1411.
15. Service of Animals. 52-1501 to 52-1506.
16. Master Lien List. 52-1601 to 52-1605.
17. Security Interest in Rents. 52-1701 to 52-1708.
18. Mobile Homes. 52-1801.
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

(a) MISCELLANEOUS

- | Section | |
|---------|--|
| 52-101. | Repealed. Laws 1981, LB 512, § 37. |
| 52-102. | Repealed. Laws 1981, LB 512, § 37. |
| 52-103. | Repealed. Laws 1981, LB 512, § 37. |
| 52-104. | Repealed. Laws 1981, LB 512, § 37. |
| 52-105. | Repealed. Laws 1981, LB 512, § 37. |
| 52-106. | Repealed. Laws 1981, LB 512, § 37. |
| 52-107. | Repealed. Laws 1981, LB 512, § 37. |
| 52-108. | Repealed. Laws 1981, LB 512, § 37. |
| 52-109. | Repealed. Laws 1981, LB 512, § 37. |
| 52-110. | Repealed. Laws 1981, LB 512, § 37. |
| 52-111. | Repealed. Laws 1981, LB 512, § 37. |
| 52-112. | Repealed. Laws 1981, LB 512, § 37. |
| 52-113. | Repealed. Laws 1981, LB 512, § 37. |
| 52-114. | Repealed. Laws 1981, LB 512, § 37. |
| 52-115. | Labor on railroads, similar utilities; liability of company; notice of claim; interest. |
| 52-116. | Railroad and similar construction; lien for labor or material; to what attaches. |
| 52-117. | Railroad and similar construction; lien for labor or material; statement of claim; filing; time limit; duration. |

LIENS

- Section
52-118. Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.
52-118.01. Public building construction; bond; claim for unpaid labor or material; action; procedure.
52-118.02. Public building construction; bond; action; limitation; person to bring suit; rental equipment, defined.
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52-121. Repealed. Laws 1981, LB 512, § 37.
52-122. Repealed. Laws 1981, LB 512, § 37.
52-123. Failure to apply payments received on lawful claims; unlawful; failure to discharge lien; prima facie evidence of intent to deprive or defraud.
52-124. Failure to apply payments for lawful claims; failure to discharge lien; penalty.

(b) NEBRASKA CONSTRUCTION LIEN ACT

- 52-125. Act, how cited.
52-126. Sections, purpose.
52-127. Terms, defined.
52-128. Contracting owner; presumption of agency.
52-129. Protected party, residential real estate, defined.
52-130. Real estate improvement contract, defined.
52-131. Construction lien; existence; amount; priority; enforcement.
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52-134. Lien for materials; conditions; limitations.
52-135. Notice of right to assert lien; contents; optional notice to contracting owner; notice, when effective; applicability of section.
52-136. Amount of lien.
52-137. Attachment and enforcement of lien; recording required; time limitation; attachment, when.
52-138. Priority among lien claimants.
52-139. Priority of construction liens as against claims other than construction lien claims.
52-140. Duration of lien; demand to institute judicial proceedings; continuation of lien during pendency of proceeding.
52-141. Surety bond; notice recorded; no lien attaches to real estate; bond, requirements; copy to claimant; action against surety.
52-142. Substitution of collateral; release of lien; procedure.
52-143. Obligation of claimant to furnish information to other lien claimant; damages; applicability of section.
52-144. Waiver of construction lien rights; what constitutes; validity; effect.
52-145. Notice of commencement; by whom filed; contents; recording; duration; extension.
52-146. Termination of notice of commencement; procedure.
52-147. Lien recording; contents.
52-148. Amendment of recorded lien.
52-149. Assignment of lien rights; recording; effect.
52-150. Notice of surety bond; recording; contents.
52-151. Substitution of collateral; certificate; recording; contents.
52-152. Demand to institute judicial proceedings; recording; claimant's statement; recording.
52-153. Owner's statement of apportionment of lien; recording; contents.
52-154. Discharge of lien; partial release; procedure.
52-155. Proceeding to enforce lien.
52-156. Recording of notice of termination before abandonment or completion; owner; liability.
52-157. Remedies for wrongful conduct.
52-158. Repealed. Laws 2011, LB 3, § 1.
52-159. Substitution of terms; Revisor of Statutes; duties.

(a) MISCELLANEOUS

52-101 Repealed. Laws 1981, LB 512, § 37.

52-102 Repealed. Laws 1981, LB 512, § 37.

52-103 Repealed. Laws 1981, LB 512, § 37.

52-104 Repealed. Laws 1981, LB 512, § 37.

52-105 Repealed. Laws 1981, LB 512, § 37.

52-106 Repealed. Laws 1981, LB 512, § 37.

52-107 Repealed. Laws 1981, LB 512, § 37.

52-108 Repealed. Laws 1981, LB 512, § 37.

52-109 Repealed. Laws 1981, LB 512, § 37.

52-110 Repealed. Laws 1981, LB 512, § 37.

52-111 Repealed. Laws 1981, LB 512, § 37.

52-112 Repealed. Laws 1981, LB 512, § 37.

52-113 Repealed. Laws 1981, LB 512, § 37.

52-114 Repealed. Laws 1981, LB 512, § 37.

52-115 Labor on railroads, similar utilities; liability of company; notice of claim; interest.

Whenever any laborer upon any railroad, canal, viaduct, bridge, ditch, or other similar improvement in this state, shall have just claim or demand for labor performed on any such railroad, canal, bridge, ditch, viaduct, or other similar improvement against any person or persons who are, or any company which is a contractor on such railroad, canal, viaduct or bridge, or against any person or persons who are subcontractors with any person or persons or company contracting with any such railroad, bridge, viaduct, or ditching company for the construction of any part of any such railroad, bridge, canal, viaduct or ditch of any such company, every such railroad, canal, bridge or ditch company shall be liable to pay such laborer the amount of such claim or demand with ten percent interest thereon; *Provided*, such laborer shall have given notice within sixty days after the last item of labor shall have been performed, that he or she has such claim or demand. Such notice shall be given in writing and shall specify the nature and amount of the claim or demand, and shall be delivered to the president or vice president, superintendent, agent or the managing director or chief engineer in charge of that portion of the work, or any portion of the railroad, canal, viaduct, bridge or ditch upon which such labor is performed.

Source: Laws 1881, c. 60, § 1, p. 267; R.S.1913, § 3837; C.S.1922, § 3221; C.S.1929, § 52-115; R.S.1943, § 52-115.

Statute is remedial and should be liberally construed. *Owen v. Chicago, B. & Q. Ry. Co.*, 86 Neb. 851, 126 N.W. 658 (1910).

Lumber sold to contractor, used in building temporary sheds and stables, is no foundation for lien. *Stewart-Chute Lumber Co. v. M. P. R. Co.*, 33 Neb. 29, 49 N.W. 769 (1891).

Act providing for lien on railways is constitutional. *K. C. & O. R. Co. v. Frey*, 30 Neb. 790, 47 N.W. 87 (1890).

52-116 Railroad and similar construction; lien for labor or material; to what attaches.

When material shall have been furnished, or labor performed in the construction, repair, and equipment of any railroad, canal, bridge, viaduct or other similar improvement, such laborer and materialman, contractor, or subcontractor, shall have a lien therefor, and such lien therefor shall extend and attach to the erections, excavations, embankments, bridges, roadbed, and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging, all of which, including the right-of-way, shall constitute the excavation, erection or improvement provided for and mentioned in sections 52-115 to 52-117.

Source: Laws 1881, c. 60, § 2, p. 268; R.S.1913, § 3838; C.S.1922, § 3222; C.S.1929, § 52-116; R.S.1943, § 52-116.

Description of railroad right-of-way as being between certain streets in a specified city was sufficient. *Owen v. Chicago, B. & Q. Ry. Co.*, 86 Neb. 851, 126 N.W. 658 (1910).

Mortgage, given prior to construction, mortgagees being promoters, is subject to liens. Waiver of lien is not inferred from

taking collateral security. *Kilpatrick v. Kansas City & B. R. Co.*, 38 Neb. 620, 57 N.W. 664 (1894).

52-117 Railroad and similar construction; lien for labor or material; statement of claim; filing; time limit; duration.

Every person, whether contractor or subcontractor or materialman, who wishes to avail himself of the provisions of section 52-116 shall file with the register of deeds of the county in which the building, erection, excavation or other similar improvement to be charged with the lien, is situated, a just and true statement or account of the demand due him after allowing all credits, setting forth the time when such material was furnished or labor performed, and when completed, containing a correct description of the property to be charged with the lien and verified by affidavit. Such verified statement or account must be filed by a principal contractor within ninety days, and by a subcontractor within sixty days from the date on which the last of the material shall have been furnished, or the last of the labor is performed; but a failure or omission to file the same within the periods last aforesaid shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the sixty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, when a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which such labor was done or material furnished within which to file his claim therefor. Such lien shall continue for the period of two years, and any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action. When any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits are finally determined and satisfied.

Source: Laws 1881, c. 60, § 3, p. 268; R.S.1913, § 3839; C.S.1922, § 3223; C.S.1929, § 52-117; R.S.1943, § 52-117; Laws 1961, c. 257, § 3, p. 753.

In case of lien of subcontractor, claim must have been filed within sixty days. *McPhee v. Kay*, 30 Neb. 62, 46 N.W. 223 (1890).

52-118 Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond or bonds referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total cost of ten thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond or bonds referred to in subsection (1) of this section shall be to, filed with, approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract referred to in subsection (1) of this section shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond or bonds referred to in subsection (1) of this section has been so made, filed, and approved.

(4) The bond or bonds referred to in subsection (1) of this section may be taken from the person to whom the contract is awarded by the owner and owner's representative jointly as determined by the owner. The corporate surety company referred to in subsection (1) of this section shall have a rating acceptable to the owner as the owner may require.

Source: Laws 1889, c. 28, § 1, p. 375; Laws 1913, c. 170, § 1, p. 522; R.S.1913, § 3840; C.S.1922, § 3224; C.S.1929, § 52-118; R.S. 1943, § 52-118; Laws 1953, c. 179, § 4, p. 567; Laws 1955, c. 199, § 1, p. 565; Laws 1961, c. 257, § 4, p. 754; Laws 1990, LB 257, § 1; Laws 2001, LB 420, § 32; Laws 2007, LB208, § 1.

- 1. Provisions of contract
- 2. Actions
- 3. Coverage of materials
- 4. Miscellaneous

1. Provisions of contract

Covenants and conditions of bond of contractor erecting school building will not be read into or construed as part of contract, or to alter it. *American Surety Co. v. School Dist. No. 64*, 117 Neb. 6, 219 N.W. 583 (1928).

Subcontractor furnishing millwork, etc., for schoolhouse is not bound by provision of contract between owner and principal

contractor that architect shall arbitrate all matters in dispute. *Central Nebraska Millwork Co. v. Olson & Johnson Co.*, 111 Neb. 396, 196 N.W. 707 (1923).

2. Actions

One furnishing labor or supplies to highway contractor may sue in own name on surety bond as contract made with third

person for his benefit. *West v. Detroit Fidelity & Surety Co.*, 118 Neb. 544, 225 N.W. 673 (1929).

Public officers are not liable individually to one furnishing material or labor on public work, for failure to require bond in accordance with this section. *Paxton & Vierling Iron Works v. Village of Naponee*, 107 Neb. 784, 186 N.W. 976 (1922); *Sailling v. Morrell*, 97 Neb. 454, 150 N.W. 195 (1914).

Action will lie by unpaid materialman against sureties on bond of contractor for public building, although bond was not conditioned as required by this section, and, since statute requires such bond to provide for payment of material and labor, it will be so construed. *Nye-Schneider-Fowler Co. v. Roeser*, 103 Neb. 614, 173 N.W. 605 (1919).

One furnishing labor or material in construction of building may maintain action against contractor and sureties, and no act or neglect of contractor will defeat right. *Forburger Stone Co. v. Lion Bonding & Surety Co.*, 103 Neb. 202, 170 N.W. 897 (1919).

3. Coverage of materials

A contractor's bond is security for only material and rental equipment actually used in the performance of a contract described in this section. *Quality Equip. Co. v. Transamerica Ins. Co.*, 243 Neb. 786, 502 N.W.2d 488 (1993).

Purpose of this section is to obligate a surety company to pay for material which is actually used in performing public contract. *Peter Kiewit Sons' Co. v. National Casualty Co.*, 142 Neb. 835, 8 N.W.2d 192 (1943).

Coal used in performance of contract is material within obligation of surety on contractor's bond. *Iddings Co. v. Lincoln Constr. Co.*, 104 Neb. 124, 175 N.W. 643 (1919).

Bond secures payment for material actually used in performing contract. *Higgins & Coufal v. Massachusetts Bonding & Ins. Co.*, 112 F.Supp. 390 (D. Neb. 1953).

4. Miscellaneous

Purpose of this section is to provide protection to materialmen and laborers in the construction or repair of public build-

ings where the provisions of the general mechanic's lien laws do not apply. *Dukane Corp. v. Sides Constr. Co.*, 208 Neb. 227, 302 N.W.2d 721 (1981).

In suit against principal and bonding company as surety where issue of liability of surety was not presented to jury and judgment was against principal, only attorney's fee was not recoverable. *Ritzau v. Wiebe Constr. Co.*, 191 Neb. 92, 214 N.W.2d 244 (1974).

Subcontractor has no cause of action against department or agency in absence of express or implied contract and must look to contractor or his bond for payment. *Boyd v. Benkelman Public Housing Authority*, 188 Neb. 69, 195 N.W.2d 230 (1972).

Materialman or supplier can be a subcontractor; factors in determination discussed in holding one who sold and delivered gravel to road construction site to be a subcontractor; purpose and construction of section discussed. *McElhose v. Universal Surety Co.*, 182 Neb. 847, 158 N.W.2d 228 (1968).

Duty is imposed upon state and public boards to take bond for benefit of materialmen before entering into construction contract. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

Materialmen do not have a lien upon debt owing by county to contractor. *Fremont Foundry & Machine Co. v. Saunders County*, 136 Neb. 101, 285 N.W. 115 (1939).

Contractor for public building purchasing material from dealer and paying for same is not liable on his bond to manufacturer or jobber from whom dealer purchased. *Concrete Steel Co. v. Rowles Co.*, 101 Neb. 400, 163 N.W. 323 (1917).

Surety who pays claims for labor or material on public building, after contractor's default, has interest in balance due contractor superior to one who advanced money and took assignment from latter. *First Nat. Bank of Auburn v. Pesha*, 99 Neb. 785, 157 N.W. 924 (1916).

Labor necessarily employed in performing contract for public building is protected by this section. *Nye-Schneider-Fowler Co. v. Bridges, Hoye & Co.*, 98 Neb. 27, 151 N.W. 942 (1915).

52-118.01 Public building construction; bond; claim for unpaid labor or material; action; procedure.

Every person who has furnished labor or material in the prosecution of the work provided for in the contract set out in subsection (1) of section 52-118, in respect of which a bond is or bonds are furnished under such section, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or her or material was furnished or supplied by him or her for which such claim is made shall have the right to sue on such bond or bonds for the amount or the balance thereof unpaid at the time of the institution of such suit and to prosecute the action to final execution and judgment for the sum or sums justly due him or her. Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such bond or bonds shall have a right of action upon the bond or bonds upon giving written notice to the contractor within four months from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an office or conducts his or her business or his or her residence or in any other manner in which a notice may be served.

Source: Laws 1955, c. 199, § 2, p. 566; Laws 1990, LB 257, § 2; Laws 2001, LB 420, § 33.

Under the facts of the case, evidence of a contractual relationship existed to create an exemption from the notice requirements of this section. *Gerhold Concrete Co. v. St. Paul Fire & Marine Ins.*, 269 Neb. 692, 695 N.W.2d 665 (2005).

Proviso in this section limits the right to bring suit on bond required by section 52-118 to those materialmen, laborers, and subcontractors who deal directly with the prime contractor and those materialmen, laborers, and subcontractors who, lacking

express or implied contractual relationship with the prime contractor, have direct contractual relationship with a subcontractor and who give the statutory notice of their claims to the prime contractor. *McElhose v. Universal Surety Co.*, 182 Neb. 847, 158 N.W.2d 228 (1968).

Right of action on construction bond in favor of materialmen is provided. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

52-118.02 Public building construction; bond; action; limitation; person to bring suit; rental equipment, defined.

Every suit instituted under section 52-118.01 shall be brought by any person entitled to the benefit of this action, but no such suit shall be commenced after the expiration of one year after the date of final settlement of the principal contract. The action shall be in the name of the party claiming the benefits of this action.

For the purposes of subsection (1) of section 52-118, equipment which is rented for a project covered by such subsection under a lease with an option to purchase shall be considered to be equipment rented under a straight lease agreement not to exceed the reasonable rental value of the equipment during the period such equipment is actually used on such project and unless and until the option to purchase is validly exercised under the contract.

Source: Laws 1955, c. 199, § 3, p. 567; Laws 1969, c. 435, § 1, p. 1462; Laws 1990, LB 257, § 3.

Final settlement under public building contract is a determination made and recorded in accordance with established administrative practice by the officer or department in charge that the contract has been completed and final payment is due. *Zimmerman's Electric, Inc. v. Fidelity & Deposit Co.*, 194 Neb. 248, 231 N.W.2d 342 (1975).

Final settlement was made with respect to amount due following completion of the project which was accepted by the owner

and action was barred one year thereafter. *Boyd v. Benkelman Public Housing Authority*, 188 Neb. 69, 195 N.W.2d 230 (1972).

Action on bond must be brought within one year after date of final settlement on principal contract. *Westinghouse Electric Supply Co. v. Brookley*, 176 Neb. 807, 127 N.W.2d 465 (1964).

52-119 Repealed. Laws 1969, c. 793, § 1.

52-120 Repealed. Laws 1969, c. 432, § 3.

52-121 Repealed. Laws 1981, LB 512, § 37.

52-122 Repealed. Laws 1981, LB 512, § 37.

52-123 Failure to apply payments received on lawful claims; unlawful; failure to discharge lien; prima facie evidence of intent to deprive or defraud.

It shall be unlawful for any person, firm, or corporation who has taken a contract for the erection, improvement, repair, or removal of any house, mill, manufactory, or building of any kind for another, and has received payment in whole or in part upon such contract, to fail to apply the money so received, or so much thereof as may be necessary for that purpose, in payment of the lawful claims of such laborers or materialmen as could otherwise have a right to file a laborers' or materialmen's lien against such house or other structure, with the intent thereby to deprive or defraud the owner or person so paying the person, firm or corporation receiving payment, of his funds without discharging the liens, unless such person, firm, or corporation, taking such contract, shall have received and delivered to the owner of the property the written waiver of lien from all persons who otherwise would have a right to file a lien thereon. In any prosecution under sections 52-123 and 52-124 of the person, firm, or corpora-

tion so receiving payment, when it shall be shown in evidence that any lien for labor or materials existed in favor of any laborer or materialman and that such lien has been filed within the time and at the place as provided by law for the filing of such liens and that such person, firm, or corporation charged has received payment without discharging the lien to the extent of the funds received by him, the fact of acceptance of such payment without having discharged the lien within ten days after receipt of such payment shall be prima facie evidence of intent to deprive or defraud on the part of the person, firm, or corporation so receiving payment.

Source: Laws 1969, c. 432, § 1, p. 1455.

In this section the words "with the intent thereby to deprive or defraud," should be read as though it read "with the fraudulent intent thereby to deprive". State v. McConnell, 201 Neb. 84, 266 N.W.2d 219 (1978).

This section does not make the general contractor an agent or trustee for laborers or materialmen in receiving payments from the property owners, nor does it make the amounts so received

a trust fund. State v. McConnell, 201 Neb. 84, 266 N.W.2d 219 (1978).

No express trust arises by operation of this statute and, therefore, 11 U.S.C. 35(a)(14), which prescribes release of debt created by fraud of bankrupt when acting in a fiduciary capacity, does not apply to bankrupt contractor who failed to meet requirements of section 52-123. Matter of Dloogoff, 600 F.2d 166 (8th Cir. 1979).

52-124 Failure to apply payments for lawful claims; failure to discharge lien; penalty.

Any person, firm, or corporation, the members of any firm, or the officers of any corporation, violating the provisions of section 52-123 shall be guilty of a Class II misdemeanor.

Source: Laws 1969, c. 432, § 2, p. 1456; Laws 1977, LB 40, § 308.

(b) NEBRASKA CONSTRUCTION LIEN ACT

52-125 Act, how cited.

Sections 52-125 to 52-159 shall be known and may be cited as the Nebraska Construction Lien Act.

Source: Laws 1981, LB 512, § 1.

Trustees of a health, welfare, and pension fund may assert a construction lien on behalf of union employees against the

property owner. Omaha Constr. Indus. Pension Plan v. Children's Hosp., 11 Neb. App. 35, 642 N.W.2d 849 (2002).

52-126 Sections, purpose.

Sections 52-125 to 52-159 creates, and provides for the attachment and enforceability of, a lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. Except as provided in sections 52-125 to 52-159, no nonconsensual lien arises against real estate by reason of improvements made thereon.

Source: Laws 1981, LB 512, § 2.

The Nebraska Construction Lien Act does not take away a construction lienholder's common-law right to sue for breach of

contract. Tilt-Up Concrete, Inc. v. Star City/Federal, Inc., 261 Neb. 64, 621 N.W.2d 502 (2001).

52-127 Terms, defined.

As used in sections 52-125 to 52-159, unless the context otherwise requires:

- (1) Claimant shall mean a person having a right to a lien under sections 52-125 to 52-159 upon real estate and includes his or her successor in interest;
- (2) Contract price shall mean the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the con-

tract, increased or diminished by the price of change orders or extras, amounts attributable to altered specifications, or breach of contract, including but not limited to defects in workmanship or materials. Liquidation of damages between the owner and a prime contractor does not diminish the contract price as to other claimants. If no price is agreed upon by the contracting parties, contract price shall mean the reasonable value of all services or materials covered by the contract;

(3) Contracting owner shall mean a person who owns real estate and who, personally or through an agent, enters into a contract, express or implied, for the improvement of the real estate;

(4) Construction lien or lien shall mean a lien arising under sections 52-125 to 52-159, and shall not include a security interest;

(5) Notice of commencement shall mean the notice specified in section 52-145, whether recorded by an owner or by a claimant;

(6) Notice of termination shall mean a notice terminating a notice of commencement;

(7) Prime contract shall mean any real estate improvement contract made between the contracting owner and a prime contractor;

(8) Prime contractor shall mean any person who makes a real estate improvement contract with a contracting owner;

(9) Services shall not include financing or activities in connection with financing;

(10) Construction security interest shall mean a security interest created by a security agreement that contains a legend on the first page clearly stating that it is a Construction Security Agreement and that secures an obligation which the debtor incurred for the purpose of making an improvement of the real estate in which the security interest is given if the instrument recorded to perfect the interest states that it is a construction security interest;

(11) Good faith shall mean honesty in fact and the observance of reasonable standards of fair dealing in the conduct or transaction involved;

(12) Judicial proceeding shall mean action at law or suit in equity, and any other proceeding in which rights are judicially determined;

(13) To record shall mean to present to the register of deeds for the county where the land is situated a document which he or she accepts and either enters in a daily log or notes thereon an identifying number, regardless of whether under applicable law the register of deeds is directed to file the document or otherwise to maintain a record of it. Recorded and recording have corresponding meanings;

(14) Record location shall mean the location, whether book and page, document number, electronic retrieval code, or other specific place, of a document in the public records accessible in the same recording office where the document containing the reference to the location is found; and

(15) Security interest shall mean a consensual interest in real estate which secures payment or performance of an obligation.

Source: Laws 1981, LB 512, § 3.

A potential purchaser's interest in a property does not satisfy the requirements of "contracting owner" under subsection (3) of this section, and, therefore, potential purchasers cannot limit their liability under subsection (5) of section 52-136 for construction liens properly recorded before the filing of their own

title document. *Lincoln Lumber Co. v. Lancaster*, 260 Neb. 585, 618 N.W.2d 676 (2000).

Vendor of real estate held not to be "contracting owner," where the executory contract did not require construction of

improvements ordered by purchaser necessary to subject the vendor's interest in the property to a construction lien filed by supplier. *Tuttle & Assoc. v. Gendler*, 237 Neb. 825, 467 N.W.2d 881 (1991).

52-128 Contracting owner; presumption of agency.

For the purpose of determining whether an owner is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary, between employer and employee, between spouses, between joint tenants, and among tenants in common.

Source: Laws 1981, LB 512, § 4.

52-129 Protected party, residential real estate, defined.

(1) Protected party shall mean:

(a) An individual who contracts to give a real estate security interest in, or to buy or to have improved, residential real estate all or a part of which he or she occupies or intends to occupy as a residence;

(b) A person obligated primarily or secondarily on a contract to buy or have improved residential real estate or on an obligation secured by residential real estate if, at the time he or she becomes obligated, he or she is related to an individual who occupies or intends to occupy all or a part of the real estate as a residence; or

(c) With respect to a security agreement, a person who acquires residential real estate and assumes or takes subject to the obligation of a prior protected party under the real estate security agreement.

(2) Residential real estate shall mean, in relation to a protected party, real estate, improved or to be improved, containing not more than four dwelling units and no nonresidential uses for which the protected party is a lessor. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units used for nonresidential purposes.

Source: Laws 1981, LB 512, § 5.

One must intend to occupy the real estate as a residence to be considered a protected party. *Midlands Rental & Mach., Inc. v. Christensen Ltd.*, 252 Neb. 806, 566 N.W.2d 115 (1997).

52-130 Real estate improvement contract, defined.

(1) Except as provided in subsection (2) of this section, real estate improvement contract shall mean an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of land or of a structure including:

(a) Alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(b) Construction or installation on, above, or below the surface of land;

(c) Demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(d) Seeding, sodding, or other landscaping operation;

(e) Surface or subsurface testing, boring, or analyzing; and

(f) Preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures whether or not used incident to producing a change in physical condition of the real estate.

(2) A contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on land, or other similar contracts in which the activity is primarily for the purpose of realizing upon the disposal or removal of the objects removed, or a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops, is not a real estate improvement contract.

Source: Laws 1981, LB 512, § 6.

General cleanup activities in preparation for sale of property are inconsistent with the property changes contemplated and required by this section for a valid construction lien. *Taylor v. Taylor*, 277 Neb. 617, 764 N.W.2d 101 (2009).

52-131 Construction lien; existence; amount; priority; enforcement.

(1) A person who furnishes services or materials pursuant to a real estate improvement contract has a construction lien, only to the extent provided in the Nebraska Construction Lien Act, to secure the payment of his or her contract price.

(2) A lien arises under the act only if the claimant records a lien within the time specified by section 52-137.

(3) Real estate to which a construction lien attaches is specified by section 52-133, and limitations on the existence of a lien for materials are specified by section 52-134.

(4) The amount of a claimant’s lien is specified by section 52-136. The content of the notice of the right to assert a lien to be given to the owner under section 52-136 is specified by section 52-135.

(5) The priority of a claimant’s lien as against other construction-lien claimants is specified in section 52-138, and priority as against claimants other than construction-lien claimants is specified in section 52-139.

(6) Foreclosure of a lien under the act is governed by section 52-155, and the time within which an action to foreclose must be brought by section 52-140.

Source: Laws 1981, LB 512, § 7; Laws 2003, LB 655, § 5.

A construction lien is not valid absent a contract between the parties. *Mid-America Maintenance v. Bill Morris Ford*, 232 Neb. 920, 442 N.W.2d 869 (1989).

property owner. *Omaha Constr. Indus. Pension Plan v. Children’s Hosp.*, 11 Neb. App. 35, 642 N.W.2d 849 (2002).

The Nebraska Construction Lien Act does not prevent employees of a subcontractor from filing a construction lien against the

A construction lien is not valid absent a contract between the parties. *Sorenson v. Dager*, 8 Neb. App. 729, 601 N.W.2d 564 (1999).

52-132 Public property; exempt from lien.

Notwithstanding the provisions on existence of a construction lien of section 52-131, no lien attaches under sections 52-125 to 52-159 to real estate owned by the state, a county, a municipality, or other governmental agency or political subdivision.

Source: Laws 1981, LB 512, § 8.

52-133 Real estate subject to construction lien.

(1) If at the time a construction lien is recorded there is a recorded notice of commencement covering the improvement pursuant to which the lien arises,

the lien is on the contracting owner's real estate described in the notice of commencement.

(2) Except as provided in subsection (3) of this section, if at the time a construction lien is recorded there is no recorded notice of commencement covering the improvement pursuant to which the lien arises, the lien is on the contracting owner's real estate being improved or directly benefited.

(3) If a claimant who recorded a lien while there was no recorded notice of commencement covering the real estate later records a notice of commencement, his or her lien is on the contracting owner's real estate described in the notice of commencement.

(4) If as a part of an improvement on his or her real estate or for the purpose of directly benefiting his or her real estate an owner contracts for improvements on real estate not owned by him or her, persons who furnish services or materials in connection with that improvement have a lien against the contracting owner's real estate being improved or directly benefited to the same extent as if the improvement had been on the contracting owner's real estate.

(5) If a recorded notice of commencement covers more than one lot in a platted subdivision of record, a claimant may apportion his or her lien to the various lots covered by the notice of commencement in any proportion he or she chooses and states in his or her recorded lien, including assigning all his or her lien to a particular lot.

(6) If a recorded lien does not contain an apportionment as provided in subsection (5) of this section, the owner may make demand on the claimant to make an apportionment and, if the claimant does not, within thirty days after the demand, make an apportionment by recording an amendment of the recorded lien, the owner may make a good faith apportionment by recording an owner's statement of apportionment. Notwithstanding the fact that the owner did not in fact give the notice to apportion referred to in this subsection or for any other reason was not entitled to record a statement of apportionment, or did not make a good faith apportionment, the apportionment is conclusive in favor of persons acquiring interests in the real estate after the statement of apportionment is recorded.

Source: Laws 1981, LB 512, § 9.

52-134 Lien for materials; conditions; limitations.

(1) A lien for furnishing materials arises only if:

(a) They are supplied with the intent, shown by the contract of sale, the delivery order, delivery to the site by the claimant or at his or her direction, or by other evidence, that they be used in the course of construction of, or incorporated into, the improvement in connection with which the lien arises; and

(b) They are either:

(i) Incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) Specially fabricated for incorporation in the improvements and not readily resalable in the ordinary course of the fabricator's business even though not actually incorporated in the improvement;

(iii) Used for the construction or for the operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) Tools, appliances, or machinery used on the particular improvement, but a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3) of this section.

(2) The delivery of materials to the site of the improvement, whether or not by the claimant, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subdivision (1)(b)(iv) of this section is limited as follows:

(a) If they are rented, the lien is for the reasonable rental value for the period of actual use and any reasonable periods of nonuse taken into account in the rental contract; and

(b) If they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value to the purchaser after the completion of the improvement on which they were used.

Source: Laws 1981, LB 512, § 10.

Subsection (3)(a) of this section requires that the reasonable rental value of equipment be determined in setting the amount of a lien, regardless of the monetary amount by which the value of the real estate is actually increased by the use of the rented equipment. *Midlands Rental & Mach., Inc. v. Christensen Ltd.*, 252 Neb. 806, 566 N.W.2d 115 (1997).

Testimony of a witness with personal knowledge is sufficient evidence to demonstrate that items listed on a construction lien were actually used. *Mid-America Maintenance v. Bill Morris Ford*, 232 Neb. 920, 442 N.W.2d 869 (1989).

52-135 Notice of right to assert lien; contents; optional notice to contracting owner; notice, when effective; applicability of section.

(1) At any time after a claimant has entered into the contract under which he or she may claim a lien under the Nebraska Construction Lien Act, he or she may give notice of the right to assert a lien to the contracting owner. The notice of the right to assert a lien must be in writing, state that it is a notice of a right to assert a lien against real estate for services or materials furnished in connection with improvement of the real estate, and contain:

(a) The name of the claimant and the address to which the owner or others may send communications to the claimant;

(b) The name and address of the person with whom the claimant contracted;

(c) The name of the owner against whom a lien is or may be claimed;

(d) A general description of the services or materials provided or to be provided;

(e) A description sufficient to identify the real estate against which the lien is or may be claimed;

(f) A statement that the claimant is entitled to record a lien;

(g) The amount unpaid to the claimant for services or materials, whether or not due, or if no amount is fixed by the contract, a good faith estimate of the amount designated as an estimate; and

(h) The following statement in type no smaller than that used in providing the information required by subdivisions (1)(a) through (1)(g) of this subsection:

Warning. If you did not contract with the person giving this notice, any future payments you make in connection with this project may subject you to double liability.

(2) A claimant may notify the contracting owner, either in the notice of the right to assert a lien or separately, that the claimant must be notified of the recording of any termination of the notice of commencement. The notice to the owner must be in writing and, if not part of the notice of the right to assert a lien, shall contain the information specified in subdivisions (1)(a) through (1)(e) of this section. In addition, the notice shall state that a written notice of the recording of any notice of termination must be given to the claimant at least three weeks before the effective date of the notice of termination.

(3) The claimant shall send a copy of a recorded lien to the contracting owner within ten days after recording, and the recording shall be within the time specified for the filing of liens under section 52-137.

(4) If the contracting owner has held out another person as contracting owner, either by naming that person in the notice of commencement or otherwise, a notice directed to and received by that person is effective against the contracting owner.

(5) If the contracting owner has held out a fictitious or nonexistent person as contracting owner either by naming that person in the notice of commencement or otherwise, a notice to that fictitious or nonexistent person delivered at an address held out by the contracting owner as the address of the fictitious or nonexistent person is effective against the contracting owner.

(6) This section shall apply to a lien claimant only when the contracting owner is a protected party.

Source: Laws 1981, LB 512, § 11; Laws 2003, LB 655, § 6.

This section applies only to protected parties, and although a party that may eventually claim a lien may, if it so desires, give notice of lien liability to the contracting owner, such notice is not required. *Midlands Rental & Mach., Inc. v. Christensen Ltd.*, 252 Neb. 806, 566 N.W.2d 115 (1997).

52-136 Amount of lien.

(1) Subject to subsection (3) of this section:

(a) The lien of a prime contractor is for the unpaid part of his or her contract price; and

(b) Except as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the amount unpaid under the claimant's contract.

(2) Except as modified by subsections (4) and (5) of this section, as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the lesser of:

(a) The amount unpaid under the claimant's contract; or

(b) The amount unpaid under the prime contract through which the claimant claims at the time the contracting owner receives the claimant's notice of the right to assert a lien.

(3) The lien of a claimant is reduced by the sum of the liens of claimants who claim through him or her.

(4) If a protected party contracting owner's lien liability under a particular prime contract as provided in subsection (5) of this section is less than the sum of claims of all claimants claiming through that particular prime contractor:

(a) Lien claimants whose liens attach at different times have liens in the order of attachment until the owner's lien liability is exhausted; and

(b) Among claimants whose liens attach, or may attach, at the same time, each claimant's lien is for his or her pro rata portion of the amount of the contracting owner's lien liability to claimants whose liens attach at that time.

(5) A protected party contracting owner's lien liability under a particular prime contract is the prime contract price less payments properly made thereon. A payment is properly made on a prime contract to the extent that the payment:

(a) Is made in good faith before the receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien; or

(b) If made after receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien, is made in good faith and leaves unpaid a part of the prime contract price sufficient to satisfy the unpaid claims of all claimants who have provided a copy of a recorded lien or who have given notice of the right to assert a lien and whose claims are not being satisfied by the payment.

Source: Laws 1981, LB 512, § 12; Laws 2003, LB 655, § 7.

A potential purchaser's interest in a property does not satisfy the requirements of "contracting owner" under subsection (3) of section 52-127, and, therefore, potential purchasers cannot limit their liability under subsection (5) of this section for construction liens properly recorded before the filing of their own title document. *Lincoln Lumber Co. v. Lancaster*, 260 Neb. 585, 618 N.W.2d 676 (2000).

The provisions of this section make it clear that a prime contractor is not entitled to payment from the owner until the

liens of the subcontractors are satisfied. *Action Heating & Air Cond. v. Petersen*, 229 Neb. 796, 429 N.W.2d 1 (1988).

Under this section, regardless of whether a claimant other than a prime contractor has substantially performed his or her contract, the claimant is entitled to a lien for the reasonable value of the labor he or she has performed and the material he or she has furnished. *Sorenson v. Dager*, 8 Neb. App. 729, 601 N.W.2d 564 (1999).

52-137 Attachment and enforcement of lien; recording required; time limitation; attachment, when.

(1) A claimant's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises and not later than one hundred twenty days after his or her final furnishing of services or materials, he or she has recorded a lien.

(2) If a lien is recorded while a notice of commencement is effective as to the improvement in connection with which the lien arises, the lien attaches as of the time the notice is recorded, even though visible commencement occurred before the notice is recorded. A notice of commencement is not effective until recording and, after recording, is effective until its lapse. A notice of commencement lapses at the earlier of its expiration as provided in subsection (2) of section 52-145 or the date it is terminated by a notice of termination as provided in section 52-146.

(3) If a lien is recorded while there is no recorded notice of commencement covering the improvement in connection with which the lien arises, the lien attaches at the earlier of visible commencement of the improvement or the recording of the lien, but if visible commencement has occurred before or within thirty days after the lapse of the last notice of commencement covering the improvement:

(a) The lien attaches at the time the lien is recorded if the lien is recorded within thirty days after lapse of the last effective notice of commencement; or

(b) The lien relates back to and attaches thirty-one days after the termination date if the lien is recorded more than thirty days after lapse of the last effective notice of commencement.

(4) If new construction is the principal improvement involved and the materials, excavation, preparation of an existing structure, or other preparation are readily visible on a reasonable inspection of the real estate, visible commencement occurs when:

(a) Materials are delivered to the real estate to which the lien attaches preparatory to construction;

(b) Excavation on the real estate to which the lien attaches is begun; or

(c) Preparation of an existing structure to receive the new construction, or other preparation of the real estate to which the lien attaches, is begun.

(5) In all cases not covered by subsection (4) of this section the time visible commencement occurs is to be determined by the circumstances of the case.

Source: Laws 1981, LB 512, § 13.

The prime purpose of a notice of commencement is to eliminate as a controvertible question of fact the time of visible commencement of operations by providing a method to deter-

mine this time with certainty. *Borrenpohl v. DaBeers Properties*, 276 Neb. 426, 755 N.W.2d 39 (2008).

52-138 Priority among lien claimants.

(1) All liens attaching at the same time have equal priority and share the amount received upon foreclosure of the liens and available for distribution to construction lien claimants in the same ratio as the ratio of the particular lien bears to the total of all liens attaching at the same time.

(2) Except as provided by subsection (3) of this section, liens attaching at different times have priority in the order of attachment.

(3) A claimant who records a notice of commencement after he or she has recorded a lien has only equal priority with claimants who record a lien while the notice of commencement is effective. Any priority which the claimant gained over third parties by recording his or her notice of lien is preserved for the benefit of all claimants having equal priority under this subsection.

Source: Laws 1981, LB 512, § 14.

52-139 Priority of construction liens as against claims other than construction lien claims.

(1) Except as provided in this section, a construction lien has priority over adverse claims against the real estate as if the construction-lien claimant were a purchaser for value without knowledge who had recorded at the time his or her lien attached.

(2) Except as provided in subsection (3) of this section, a construction lien has priority over subsequent advances made under a prior recorded security interest if the subsequent advances are made with knowledge that the lien has attached.

(3) Notwithstanding knowledge that the construction lien has attached, or the advance exceeds the maximum amount stated in the recorded security agreement and whether or not the advance is made pursuant to a commitment, a subsequent advance made under a security agreement recorded before the construction lien attached has priority over the lien if:

(a) The subsequent advance is made under a construction security agreement and is made in payment of the price of the agreed improvements;

(b) The subsequent advance is made or incurred for the reasonable protection of the security interest in the real estate, such as payment for real property taxes, hazard insurance premiums, or maintenance charges imposed under a condominium declaration or other covenant; or

(c) The subsequent advance was applied to the payment of any lien or encumbrance which was prior to the construction lien.

(4) To the extent that a subsequent security interest is given to secure funds used to pay a debt secured by a security interest having priority over a construction lien under this section, the subsequent security interest is also prior to the construction lien.

(5) Even though notice of commencement has been recorded, a buyer who is a protected party takes free of all construction liens that are not of record at the time his or her title document is recorded.

Source: Laws 1981, LB 512, § 15.

52-140 Duration of lien; demand to institute judicial proceedings; continuation of lien during pendency of proceeding.

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in sections 52-125 to 52-159 continues enforceable for two years after recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, or other person having an interest in the real estate gives the claimant written demand to institute a judicial proceeding within thirty days, the lien lapses unless within thirty days after receipt of the written demand, the claimant institutes judicial proceedings or records an affidavit that the total contract price is not yet due under the contract for which he or she recorded the lien.

(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 1981, LB 512, § 16.

52-141 Surety bond; notice recorded; no lien attaches to real estate; bond, requirements; copy to claimant; action against surety.

(1) A lien does not attach to the real estate on behalf of any claimant claiming through a particular prime contractor if the owner or the prime contractor has procured from a surety company authorized to do business in this state a bond meeting the requirements of this section and has recorded a notice of surety bond.

(2) The bond must obligate the surety company, to the extent of the penal sum of the bond, to pay all sums due to construction lien claimants other than the prime contractor for services and materials supplied pursuant to the contract under which the lien would otherwise arise.

(3) The penal sum of the bond shall be not less than:

(a) Fifty percent of the contract price, if the prime contract price is not more than one million dollars;

(b) Forty percent of the contract price, if the prime contract price is more than one million dollars and not more than five million dollars;

(c) Two million, five hundred thousand dollars, if the prime contract price is more than five million dollars.

(4) The person procuring the bond shall furnish on request a true copy at cost of reproduction to any claimant and is liable to the requesting claimant for any damages caused by failure, without justification, to furnish a copy.

(5) A claimant may not recover under the bond provided for in this section unless he or she:

(a) Institutes suit against the surety within one year after the completion of his or her performance or within any longer period of time permitted by the terms of the bond; and

(b) If he or she is a claimant not having a direct contract relationship with the prime contractor, within ninety days after completion of his or her performance gives the prime contractor written notice of the amount due.

(6) A claimant having a claim under the bond may proceed directly against the surety. A judicial proceeding on the bond may be maintained separately from and without bringing a judicial proceeding against the prime contractor and without complying with the notice and recording procedures of sections 52-125 to 52-159. In any judicial proceeding brought on the bond the court shall award to the prevailing party reasonable attorney's fees and court costs.

(7) The obligation of a surety under this section is not affected by any change or modification of the contract between the prime contractor and the contracting owner, but the total liability of the surety may not exceed the penal sum of the bond.

Source: Laws 1981, LB 512, § 17.

52-142 Substitution of collateral; release of lien; procedure.

(1) Any person having an interest in real estate may release the real estate from liens which have attached to it by:

(a) Depositing in the office of the clerk of the district court of the county in which the lien is recorded a sum of money in cash, certified check, or other bank obligation, or a surety bond issued by a surety company authorized to do business in this state, in an amount sufficient to pay the total of the amounts claimed in the liens being released plus fifteen percent of such total; and

(b) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing that the deposit has been made.

(2) The clerk of the district court has an obligation to accept the deposit and issue the certificate.

(3) Upon release of the real estate from a lien under this section, the claimant's rights are transferred from the real estate to the deposit or surety bond and the claimant may establish his or her claim under sections 52-125 to 52-159, and upon determination of the claim the court shall order the clerk of the district court to pay the sums due or render judgment against the surety company on the bond, as the case may be.

Source: Laws 1981, LB 512, § 18.

52-143 Obligation of claimant to furnish information to other lien claimant; damages; applicability of section.

(1) A prime contractor, on request, is obligated to furnish the following information within a reasonable time, not exceeding ten days, to any person entitled to claim a lien through him or her:

- (a) A description of the real estate being improved sufficient to identify it;
- (b) The name and address of the contracting owner with whom the prime contractor contracted; and
- (c) Whether there is a surety bond and, if so, the name of the surety.

(2) At the request of any person who may claim a lien through him or her, any claimant other than a prime contractor must furnish, within a reasonable time not exceeding five days, the name of the person who contracted for the furnishing by the claimant of the materials or services in connection with which the lien claim may arise.

(3) A person who fails to furnish information as required by this section is liable to the requesting party for actual damages or two hundred dollars as liquidated damages.

(4) This section shall apply only when the real estate improvement contract is with a protected party.

Source: Laws 1981, LB 512, § 19.

52-144 Waiver of construction lien rights; what constitutes; validity; effect.

(1) A written waiver of construction lien rights signed by a claimant requires no consideration and is valid and binding, whether signed before or after the materials or services were contracted for or furnished. Ambiguities in a written waiver are construed against the claimant.

(2) A written waiver waives all construction lien rights of the claimant as to the improvement to which the waiver relates unless the waiver is specifically limited to a particular lien right or a particular portion of the services or materials furnished.

(3) A waiver of lien rights does not affect any contract rights of the claimant otherwise existing.

(4) Acceptance of a promissory note or other evidence of debt is not a waiver of lien rights unless the note or other instrument expressly so declares.

Source: Laws 1981, LB 512, § 20.

52-145 Notice of commencement; by whom filed; contents; recording; duration; extension.

(1) A notice of commencement must be signed by the contracting owner, be denominated notice of commencement, and state:

- (a) The real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;
- (b) The name and address of the contracting owner, his or her interest in the real estate, and the name and address of the fee simple title holder, if other than the contracting owner; and

(c) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(2) The notice of commencement may state its duration, but if a duration is stated of less than six months from the time of recording, the duration of the notice is six months. If no duration is stated, the duration of the notice is one year after the recording.

(3) The notice of commencement may state that it is limited to a particular improvement project, or portion thereof, on the real estate. But the limitation is not effective unless the particular improvement, or portion thereof, to which it applies is stated with sufficient specificity that a claimant, by reasonable inquiry, can determine whether his or her contract is covered by the notice of commencement.

(4) A contracting owner may extend the duration of a notice of commencement by recording before the lapse thereof a continuation statement signed by him or her which refers to the record location and date of recording of the notice of commencement and states the date to which the notice of commencement's duration is extended.

(5) If no notice of commencement applies to an improvement, any claimant who is entitled to record a lien may record a notice of commencement denominated notice of commencement, claimant recording, signed by him or her, stating:

(a) In accordance with subsection (10) of this section, the real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;

(b) The name and address of the contracting owner against whom the notice of commencement is effective;

(c) The name and address of the claimant recording the notice of commencement;

(d) The name and address of the person with whom the claimant contracted with respect to the improvement;

(e) A brief description of the services or materials provided, or to be provided, by the claimant for the improvement; and

(f) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(6) A claimant recording a notice of commencement, not later than the day it is recorded, must send a copy thereof to the contracting owner. The claimant is liable to the contracting owner for any damages caused by failure to comply with this subsection.

(7) Sections 52-125 to 52-159 apply equally to all notices of commencement, but as to a notice of commencement recorded by a claimant:

(a) Notwithstanding any stated duration, the duration is one year after the recording; and

(b) The limitation under subsection (3) of this section is not effective.

(8) Unless a notice of commencement is limited to a particular improvement project, or portion thereof, it covers all improvements made on the real estate

described therein whether or not they were contemplated at the time of the recording.

(9) Unless a notice of commencement provides otherwise, it covers improvements made on real estate not owned by the contracting owner if, under subsection (4) of section 52-133, a lien arises against the contracting owner's real estate described in the notice of commencement as a result of the improvements.

(10) A notice of commencement recorded by a claimant under subsection (5) of this section may describe all or any part of the contracting owner's real estate being improved or directly benefited.

Source: Laws 1981, LB 512, § 21.

52-146 Termination of notice of commencement; procedure.

(1) A contracting owner may terminate a notice of commencement as to all or any identified portion of the real estate subject to the notice of commencement by:

(a) Recording a notice of termination denominated termination of notice of commencement and containing:

(i) The information required by subdivisions (1)(a) and (1)(b) of section 52-145 for a notice of commencement;

(ii) A reference to the recorded notice of commencement by its record location and a statement of its date of recording;

(iii) A statement of the date as of which the notice of commencement is terminated which date may not be earlier than thirty days after the notice of termination is recorded; and

(iv) If the notice of termination is to apply only to a portion of the real estate subject to the notice of commencement, a statement of that fact and a description of the portion of the real estate to which the notice of termination applies;

(b) Sending, at least three weeks before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all claimants who have requested that the owner notify them of the recording of a notice of termination;

(c) Publishing a notice of the recording of the notice of termination, which notice must comply with the provisions of subsection (2) of this section and be published at least once a week for three consecutive weeks in a newspaper having general circulation in the county where the recording occurs, the last publication of which must be at least five days before the stated termination date; and

(d) Recording an affidavit stating that notice of the recorded notice of termination has been sent to all claimants who have requested notice and that publication has been made. The affidavit must state the newspaper and dates of publication and include a copy of the published notice.

(2) The published notice of the recording of the notice of termination must contain the information required for the notice of termination under subsection (1) of this section, a statement of the date on which the notice of termination was recorded, and a statement that all lien claims for which a notice of lien is not recorded by the termination date may be defeated by a transfer of the real estate.

(3) A purchaser, judgment creditor, or other person having a lien against the real estate may rely on the affidavit without obligation to inquire as to its accuracy, and is not prejudiced by its inaccuracy.

Source: Laws 1981, LB 512, § 22.

52-147 Lien recording; contents.

(1) A claimant may record a lien which shall be signed by the claimant and state:

(a) The real estate subject to the lien, with a description thereof sufficient for identification;

(b) The name of the person against whose interest in the real estate a lien is claimed;

(c) The name and address of the claimant;

(d) The name and address of the person with whom the claimant contracted;

(e) A general description of the services performed or to be performed or materials furnished or to be furnished for the improvement and the contract price thereof;

(f) The amount unpaid, whether or not due, to the claimant for the services or materials or if no amount is fixed by the contract a good faith estimate of the amount designated as an estimate; and

(g) The time the last services or materials were furnished or if that time has not yet occurred, an estimate of the time.

(2) The name given in the lien in accordance with the requirement of subdivision (1)(b) of this section may be the name of the contracting owner or the name of the record holder of the contracting owner's interest at the time of recording the lien.

Source: Laws 1981, LB 512, § 23.

52-148 Amendment of recorded lien.

(1) A recorded lien may be amended by an additional recording at any time during the period allowed for recording the original lien. An amendment adding real estate or increasing the amount of lien claimed is effective as to the additional real estate or increased amount only from the time the amendment is recorded.

(2) A recorded lien may be amended after the period allowed for recording the original lien for the purpose of:

(a) Reducing the amount of the lien;

(b) Reducing the real estate against which the lien is claimed; or

(c) Making an apportionment of the lien among lots of a platted subdivision of record.

(3) An amendment shall state the record location and date of recording of the notice of lien being amended and shall state the respects in which it is being amended.

Source: Laws 1981, LB 512, § 24.

52-149 Assignment of lien rights; recording; effect.

(1) A claimant having a recorded lien, or his or her assignee, may record an assignment signed by the claimant which sets forth the name of the claimant, the name and address of the assignee, the person against whom the lien is claimed, the real estate affected with a description thereof sufficient for identification, and the record location and date of the recording of the notice of lien.

(2) Even though an assignment has been recorded, an owner may continue to deal with the original claimant as to the claim until the owner receives notice of the assignment and a direction that no arrangements or payments may be made without the assignee's consent. If requested by the owner, the assignee must furnish reasonable proof that an assignment has been made and unless he or she does so, the owner may pay the assignor.

(3) Unless a statement of assignment is recorded, the assignee need not be a party to any judicial proceeding to foreclose a security interest, lien, or other encumbrance.

(4) The failure to record an assignment does not otherwise affect its validity.

Source: Laws 1981, LB 512, § 25.

52-150 Notice of surety bond; recording; contents.

(1) If a prime contractor or owner has secured a surety bond a notice of surety bond may be recorded.

(2) The notice shall be signed by the contractor or owner and by the surety company and state:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The names and addresses of the owner and the prime contractor;

(c) The name and address of the surety company and the name and address of a person on whom service of process may be made;

(d) The total sum of the bond and that the bond meets the requirements of section 52-141; and

(e) That the bond is for the purpose of relieving the real estate from construction liens arising under the contract between the named prime contractor and contracting owner.

Source: Laws 1981, LB 512, § 26.

52-151 Substitution of collateral; certificate; recording; contents.

(1) A person who has deposited money or a surety bond with the clerk of the district court in substitution of collateral as provided in section 52-142 may record a certificate of the clerk of the district court showing the deposit.

(2) The certificate, which shall be signed by the clerk of the district court, shall state the amount deposited, if money, or, if a surety bond, the amount of the bond and the name and address of the surety company.

(3) The certificate also shall state, on the basis of information supplied by the person making the deposit:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The name and address of the person in whose behalf the deposit was made;

(c) If a surety bond is deposited, the name and address of a person on whom service of process may be made; and

(d) The name of the claimants for whom the deposit is made, the amount of their claims, and the record location of their liens.

Source: Laws 1981, LB 512, § 27.

52-152 Demand to institute judicial proceedings; recording; claimant's statement; recording.

(1) A person giving a demand to institute judicial proceedings to enforce a lien, after giving the demand, may record a copy of the demand in the office in which the lien was recorded. The demand must refer by record location to the recorded lien under which it was given, and state the date demand was given to institute judicial proceedings and the names of the owner and the claimant.

(2) A claimant who has received demand to institute judicial proceedings may record, in the office in which the lien was recorded, a statement that the total contract price is not yet due under the contract for which the lien was recorded. The statement must refer to the recorded lien by its record location and give the names of the owner and the claimant.

Source: Laws 1981, LB 512, § 28.

52-153 Owner's statement of apportionment of lien; recording; contents.

An owner who is entitled to apportion a lien among lots of a platted subdivision of record may record a statement making the apportionment. The statement must refer to the record location of the lien being apportioned, state the name of the owner and the claimant, state the date on which the demand to apportion was made on the claimant and that he or she has not apportioned, and make the apportionment.

Source: Laws 1981, LB 512, § 29.

52-154 Discharge of lien; partial release; procedure.

(1) A lien provided by sections 52-125 to 52-159 may be discharged of record by:

(a) Recording a signed statement of the record claimant stating that the lien is released;

(b) Failing to record, within the time prescribed in the provisions on duration of lien under section 52-140, an affidavit that the total contract price is not yet due;

(c) Recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction so providing; or

(d) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing the deposit of substitute collateral.

(2) The lien claimant of record by partial release may reduce the amount of the lien claimed in the notice of lien or limit the notice of lien to a portion of the real estate described in the notice of commencement by recording an amendment to his or her lien showing the reduction in amount or limited portion of the real estate against which a lien is claimed.

(3) A statement under subdivision (1)(a) of this section or a judgment under subdivision (1)(c) of this section must refer by record location to the notice of lien to which it applies.

Source: Laws 1981, LB 512, § 30.

52-155 Proceeding to enforce lien.

(1) Except as otherwise provided in this section, the rules applicable to a civil action apply to a proceeding to foreclose liens under sections 52-125 to 52-159.

(2) In a proceeding to foreclose a lien, all claimants having recorded liens may join as plaintiffs and those who do not join as plaintiffs may be joined as defendants. Any person who records a lien or acquires an interest in real estate after the commencement of the foreclosure proceeding may be made a defendant before judgment.

(3) The court shall determine the amount due or owing to each claimant and direct foreclosure of the liens against the real estate. Foreclosure may be by any method available for foreclosure of security interests in real estate, or otherwise, as ordered by the court.

Source: Laws 1981, LB 512, § 31.

This section does not limit foreclosure on a construction lien to the mortgage foreclosure statutes, but instead provides that the court may utilize any method available for foreclosure, including but not limited to the mortgage foreclosure statutes. *Tilt-Up Concrete, Inc. v. Star City/Federal, Inc.*, 261 Neb. 64, 621 N.W.2d 502 (2001).

52-156 Recording of notice of termination before abandonment or completion; owner; liability.

(1) If a contracting owner records a notice of termination before abandonment or substantial completion of all the improvements covered by the notice of commencement being terminated, he or she is personally liable to any lien claimant to the extent that the claimant is unable to realize on a lien because the notice of termination was recorded before abandonment or substantial completion.

(2) A notice of termination is effective even though the owner, under subsection (1) of this section, may be personally liable to lien claimants by reason of his or her recording the notice of termination.

Source: Laws 1981, LB 512, § 32.

52-157 Remedies for wrongful conduct.

(1) If a person is wrongfully deprived of benefits to which he or she is entitled under sections 52-125 to 52-159 by conduct other than that described in section 52-156:

(a) He or she is entitled to damages; and

(b) The court may make orders restraining the owner or other person, or ordering them to proceed on appropriate terms and conditions.

(2) If in bad faith a claimant records a lien, overstates the amount for which he or she is entitled to a lien, or refuses to execute a release of a lien, the court may:

(a) Declare his or her lien void; and

(b) Award damages to the owner or any other person injured thereby.

(3) Damages awarded under this section may include the costs of correcting the record and reasonable attorney’s fees.

Source: Laws 1981, LB 512, § 33.

To act with bad faith, one must know his or her lien is invalid or overstated or act with reckless disregard as to such facts. *Chicago Lumber Co. of Omaha v. Selvera*, 282 Neb. 12, 809 N.W.2d 469 (2011).

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

52-158 Repealed. Laws 2011, LB 3, § 1.

52-159 Substitution of terms; Revisor of Statutes; duties.

Whenever in the statutes of Nebraska, unless the context otherwise requires, the term mechanic’s lien or words referring to such term occur they shall be taken to mean and apply to construction lien as used in sections 52-125 to 52-159. The Revisor of Statutes shall substitute the appropriate term or words in the statutes necessitated by this section.

Source: Laws 1981, LB 512, § 35.

**ARTICLE 2
ARTISAN’S LIEN**

Section

- 52-201. Creation of lien; retention of property authorized.
- 52-202. Lien; perfection; financing statement; filing.
- 52-203. Lien; effect; priority; limitation; enforcement; fee.
- 52-204. Lien satisfied; financing statement; termination.

52-201 Creation of lien; retention of property authorized.

(1) Any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, farm implement, or tool or shoes a horse or mule at the request of or with the consent of the owner or owners thereof shall have a lien on such vehicle, automobile, machinery, farm implement, tool, horse, or mule while in such person’s possession for the reasonable or agreed charges for the work done or material furnished and shall have the right to retain such property until such charges are paid.

(2) Any person who exercises the right to retain such property shall not assess any additional fee beyond the reasonable or agreed charges for the work done or material furnished unless the person first sends, by certified mail, (a) a notice of possession of such property, intent to assess an additional reasonable fee beginning with the date that the notice is sent, and the amount or rate of the additional reasonable fee to the owner or owners for whom the work was performed and (b) a copy of such notice to any lienholder noted on the certificate of title if applicable.

Source: Laws 1913, c. 123, § 1, p. 310; R.S.1913, § 3841; C.S.1922, § 3225; C.S.1929, § 52-201; R.S.1943, § 52-201; Laws 2003, LB 655, § 8.

Provision in lease-purchase agreement that lessee shall furnish maintenance and repair does not constitute consent of lessor-owner to repair ordered by lessee so as to subject vehicle to lien. *Gibreal Auto Sales, Inc. v. Missouri Valley Machinery Co.*, 186 Neb. 763, 186 N.W.2d 719 (1971).

Repairer of automobile has no possessory lien as against unpaid vendor of conditional sales contract whose lien is shown

on certificate of title. *Allied Inv. Co. v. Shaneyfelt*, 161 Neb. 840, 74 N.W.2d 723 (1956).

Any person who repairs or enhances value of an automobile at request of or with the consent of the owner has an artisan’s lien. *Hickman-Williams Agency v. Haney*, 152 Neb. 219, 40 N.W.2d 813 (1950).

Artisan's lien for repair of automobile is superior to chattel mortgage not recorded in the county, and of which the artisan had no knowledge. *National Bond & Investment Co. v. Haas*, 124 Neb. 631, 247 N.W. 563 (1933).

Repairer of automobile, sold under conditional sale contract, had no possessory lien hereunder as against unpaid conditional vendor, in absence of showing that repairs were made at request of or with consent of conditional vendor or his assignee. *General Motors Acceptance Corp. v. Sutherland*, 122 Neb. 720, 241 N.W. 281 (1932).

In a replevin action, where the defendant's right of possession therein is created by virtue of a lien of truck repairs, the value of the right of possession and not the value of the truck is the measure of defendant's damage for failure to return truck. *Jackson v. Arndt-Snyder Motor Co.*, 122 Neb. 276, 240 N.W. 279 (1932).

Where distributor of motor vehicles put a body and cab upon truck chassis, and still had possession at time of commencing of action of replevin, distributor was entitled to lien as against manufacturer. *Fulton Motor Truck Co. v. Gordon Fire-Proof Warehouse & Van Co.*, 105 Neb. 515, 181 N.W. 162 (1920).

52-202 Lien; perfection; financing statement; filing.

Any person who makes, alters, repairs, or in any way enhances the value of any vehicle, automobile, machinery, or farm implement or tool or shoes any horse or mule, at the request of or with the consent of the owner or owners thereof, has a lien upon such property, in cases when he or she has parted with the possession of such property, for his or her reasonable or agreed charges for the work performed or material furnished. 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 sixty days after performing such work or furnishing such material and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the person claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person for whom the work was performed or material furnished, (3) a description of the work performed or material furnished, (4) a description of the property upon which such work was performed or material furnished, and (5) the amount due for such work performed or material 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 for whom the work was performed or material furnished.

Source: Laws 1913, c. 123, § 2, p. 310; R.S.1913, § 3842; C.S.1922, § 3226; C.S.1929, § 52-202; R.S.1943, § 52-202; Laws 1988, LB 943, § 1; Laws 1998, LB 1321, § 79; Laws 2001, LB 54, § 1.

Under this section, an artisan's lien attaches if the necessary documents are filed within 60 days of the furnishing of an item of labor or material which is part of a simple contract or

undertaking. *Cool v. Sahling Trucks, Inc.*, 237 Neb. 541, 666 N.W.2d 796 (1991).

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 3

JEWELER'S LIEN

Section

52-301. Lien; scope.

52-302. Verified statement; filing.

52-303. Foreclosure; limitation; joinder of claims.

52-304. Foreclosure; sale; proceeds; excess; disposition.

52-301 Lien; scope.

Upon all articles left or given to jewelers, silversmiths, or watch and clock repairers, for repairs, parts or work thereon, the jeweler, silversmith, watch or clock repairer, shall have a lien on such article for the cost of repairs, parts or work thereon and material put on or in such article.

Source: Laws 1921, c. 175, § 1, p. 673; C.S.1922, § 3230; C.S.1929, § 52-301; R.S.1943, § 52-301.

52-302 Verified statement; filing.

When one year has elapsed after completion of repairs, work upon or material put on or in such article, if the indebtedness remains due, unpaid or owing, such jeweler, silversmith, watch or clock repairer may file with the county clerk of the county in which such jeweler, silversmith, watch or clock repairer resides, a list showing the name, the address if known, the article and the amount of the bill against the same, duly signed and sworn to before a person authorized to administer oaths.

Source: Laws 1921, c. 175, § 2, p. 673; C.S.1922, § 3231; C.S.1929, § 52-302; R.S.1943, § 52-302.

52-303 Foreclosure; limitation; joinder of claims.

If within thirty days after the filing of such lien with the county clerk as required by section 52-302, the owner fails to pay such charges, the lien shall be treated in all respects as a secured transaction as provided in article 9, Uniform Commercial Code, and may be foreclosed in the manner and form provided for the foreclosure of secured transactions as provided in article 9, Uniform Commercial Code, except that more than one article and charge may

be filed in the same lien and foreclosed in the same proceeding, and a publication of a list of several articles and charges published together shall be deemed sufficient notice. Such foreclosure shall be instituted within one year after the filing of the lien.

Source: Laws 1921, c. 175, § 3, p. 673; C.S.1922, § 3232; C.S.1929, § 52-303; R.S.1943, § 52-303; Laws 1969, c. 436, § 2, p. 1463; Laws 1999, LB 550, § 13.

52-304 Foreclosure; sale; proceeds; excess; disposition.

If the property sold under foreclosure shall bring more than the charges and costs of foreclosure, the excess shall be paid to the county treasurer of the county in which the foreclosure is had, and a statement shall be made to the county treasurer of the amount of excess due to the owners of the articles sold, which sum may be procured by the owner by filing a claim with the county board in the usual manner.

Source: Laws 1921, c. 175, § 4, p. 674; C.S.1922, § 3233; C.S.1929, § 52-304; R.S.1943, § 52-304.

ARTICLE 4

LIEN OF PHYSICIAN, NURSE, OR HOSPITAL

Section

52-401. Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

52-402. Physician, defined.

52-401 Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

Whenever any person employs a physician, nurse, chiropractor, or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person claims damages from the party causing the injury, such physician, nurse, chiropractor, or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the usual and customary charges of such physician, nurse, chiropractor, or hospital applicable at the times services are performed, except that no such lien shall be valid against anyone coming under the Nebraska Workers' Compensation Act. For persons covered under private medical insurance or another private health benefit plan, the amount of the lien shall be reduced by the contracted discount or other limitation which would have been applied had the claim been submitted for reimbursement to the medical insurer or administrator of such other health benefit plan. The measure of damages for medical expenses in personal injury claims shall be the private party rate, not the discounted amount.

In order to prosecute such lien, it shall be necessary for such physician, nurse, chiropractor, or hospital to serve a written notice upon the person or corporation from whom damages are claimed that such physician, nurse, chiropractor, or hospital claims a lien for such services and stating the amount due and the nature of such services, except that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

A physician, nurse, chiropractor, or hospital claiming a lien under this section shall not be liable for attorney's fees and costs incurred by the injured person in securing the judgment, settlement, or compromise, but the lien of the injured person's attorney shall have precedence over the lien created by this section.

Upon a written request and with the injured person's consent, a lienholder shall provide medical records, answers to interrogatories, depositions, or any expert medical testimony related to the recovery of damages within its custody and control at a reasonable charge to the injured person.

Source: Laws 1927, c. 162, § 1, p. 425; C.S.1929, § 52-401; R.S.1943, § 52-401; Laws 1986, LB 811, § 138; Laws 1995, LB 172, § 1; Laws 2008, LB586, § 1.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

1. Lien attachment
2. Usual and customary charges
3. Miscellaneous

1. Lien attachment

The lien of a service provider under this section attaches at the time the services are performed for purposes of the application of this section. In re Conservatorship of Holle, 254 Neb. 380, 576 N.W.2d 473 (1998).

A hospital lien under this section attaches on a patient's admission to the hospital for treatment. Ehlers v. Perry, 242 Neb. 208, 494 N.W.2d 325 (1993).

2. Usual and customary charges

In this section, the phrase "usual and customary charges" acts as a cap; it prevents the lien from being an amount greater than what the health care provider typically charges other patients for the services that it provided to the injured party. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Under this section, the lien is equal to the debt still owed to the health care provider for its usual and customary charges. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Usual and customary charges are the charges of the service provider instead of the amount actually collected. Parnell v. Madonna Rehab. Hosp., Inc., 258 Neb. 125, 602 N.W.2d 461 (1999).

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

3. Miscellaneous

By perfecting the lien created under this section before the tort-feasor pays the judgment or settlement to the patient, the health care provider creates an obligation on the tort-feasor to ensure that the provider's bill will be satisfied from the funds that the tort-feasor owes to the patient. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

If a tort-feasor's insurer impairs a lien created under this section, then the insurer is directly liable to the health care provider for the amount that would have been necessary to satisfy the lien. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

A hospital lien which attaches prior to a patient's filing for bankruptcy relief is unaffected by the patient's discharge in bankruptcy. An insurance company breaches its duty to a hospital not to impair the hospital's rights under its lien by settling

directly with a patient rather than making payment to the hospital. Alegent Health v. American Family Ins., 265 Neb. 312, 656 N.W.2d 906 (2003).

The recovery of the full amount owed to a lienholder, less the lienholder's proportionate share for attorney fees and litigation expenses, operates to fully satisfy debt owed under this section. National Acct. Sys. of Lincoln v. Glasscock, 247 Neb. 620, 529 N.W.2d 529 (1995).

This section requires a pro rata reduction of medical provider's lien for any fees due patient's counsel. In re Guardianship & Conservatorship of Bloomquist, 246 Neb. 711, 523 N.W.2d 352 (1994).

The proper party defendant in a suit to enforce a hospital lien is generally the party responsible for the patient's injuries, not that party's insurer. A hospital lien attaches upon admission of the patient to the hospital for treatment and is thereafter enforceable against the patient, but perfection is required to enforce the lien against third parties. Upon perfection of a lien by a hospital, a duty arises on the part of the tort-feasor's insurer not to impair the hospital's lien, and if such an insurer settles directly with the injured party despite the existence of a perfected lien, it has breached that duty and is liable directly to the hospital. At least substantial compliance with the notice requirements of the hospital lien statute is necessary to perfect such a lien, and actual knowledge that the hospital is treating the patient alone is not sufficient. West Neb. Gen. Hosp. v. Farmers Ins. Exch., 239 Neb. 281, 475 N.W.2d 901 (1991).

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

Under established rules of statutory construction, chiropractors are excluded by omission as health care professionals entitled to file a physician lien. Nelsen v. Grzywa, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

A lien that has been perfected under the law of the state where the hospital service was rendered constitutes a valid lien upon any award, judgment, or settlement, regardless of where the event which caused the injury occurred or of the residence of the injured party or the party causing the injury. AMISUB, Inc. v. Allied Prop. & Cas. Ins. Co., 6 Neb. App. 696, 576 N.W.2d 493 (1998).

52-402 Physician, defined.

The term physician shall include surgeon, and shall mean one legally authorized to practice his profession within the State of Nebraska and in good standing in his profession at the time.

Source: Laws 1915, c. 210, § 3, p. 469; C.S.1922, § 3236; C.S.1929, § 52-402; R.S.1943, § 52-402.

Under established rules of statutory construction, chiropractors are excluded by omission as health care professionals entitled to file a physician lien. *Nelsen v. Grzywa*, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

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.
 52-502. Lien; effect; not assignable; landlord's share exempt.
 52-503. Repealed. Laws 2001, LB 54, § 33.
 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.

An action to declare a lien void because there is no underlying debt is an action at law. *Lone Cedar Ranches v. Jandebeur*, 246 Neb. 769, 523 N.W.2d 364 (1994).

The sole and only purpose of the thresher's lien law is to give notice of the existence of a lien by the person who combined the grain to all prospective purchasers of grain and to owners thereof within 30 days after completion of combining. The

holder of a thresher's lien has the same rights of enforcement given to owners of secured interests, including the remedy of replevin. A thresher's lien is remedial in nature and requires liberal construction so that a purchaser may not escape the statute by merely paying the seller in advance. *Honstein Trucking v. Sandhills Beef, Inc.*, 209 Neb. 422, 308 N.W.2d 331 (1981).

52-502 Lien; effect; not assignable; landlord's share exempt.

A lien created under section 52-501 shall not attach to such grain, seed, or corn in the hands of an innocent purchaser or dealer in the usual course of trade unless all the notices provided for in such section shall have been given. In the event the threshing, combining, hulling, picking, husking, or shelling was done on rented or leased land, the lien shall not apply to the landlord's or lessor's share of the grain, seed, or corn. The lien shall not be assignable.

Source: Laws 1923, c. 117, § 2, p. 279; C.S.1929, § 52-502; Laws 1939, c. 63, § 2, p. 267; C.S.Supp.,1941, § 52-502; R.S.1943, § 52-502; Laws 1945, c. 126, § 2, p. 408; Laws 2001, LB 54, § 5.

52-503 Repealed. Laws 2001, LB 54, § 33.

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

- 52-601. Repealed. Laws 1974, LB 960, § 4.
- 52-601.01. Services performed upon personal property; disposition of property; when; notice.
- 52-602. Repealed. Laws 1974, LB 960, § 4.
- 52-603. Lien; how satisfied; sale.
- 52-604. Sale; proceeds; distribution.
- 52-605. Redemption.

52-601 Repealed. Laws 1974, LB 960, § 4.

52-601.01 Services performed upon personal property; disposition of property; when; notice.

A person who shall perform work or labor, or exert care or diligence, or who shall advance money or material upon personal property under a contract, expressed or implied, and who holds such property for a period of ninety days, may dispose of the property by sale or other manner. Such disposition shall not occur until thirty days after the mailing of a written notice of the intended disposition by certified mail, return receipt requested, to the last-known address of the owner of the personal property to be disposed of, and to any lien or security interest holder of record.

Source: Laws 1974, LB 960, § 4; Laws 1994, LB 1061, § 1.

52-602 Repealed. Laws 1974, LB 960, § 4.

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.

52-605 Redemption.

At any time before the goods are so sold, any person claiming a right of property or possession therein may pay the claimant the amount necessary to satisfy his lien, and pay the reasonable expenses and liabilities incurred in serving notices of advertising and preparing for sale up to the time of such payment. The claimant shall deliver the goods to the person making such payment if he is a person entitled to the possession of the goods on the payment of charges thereon.

Source: Laws 1923, c. 118, § 5, p. 282; C.S.1929, § 52-605; R.S.1943, § 52-605.

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 8

**SALE OF GOODS TO PAY FOR SERVICES RENDERED
THEREON OR FOR STORAGE**

Section

- 52-801. Clothing; household goods; services thereon; sale; notice.
- 52-802. Clothing; household goods; storage; sale; notice.
- 52-803. Sale; notice to owner; registered or certified mail; time of mailing.
- 52-804. Sale; disposition of proceeds; when payable to owner.
- 52-805. Notice to be posted in place of business.
- 52-806. Sale; where; when; notice by publication; notice by posting; contents.

52-801 Clothing; household goods; services thereon; sale; notice.

Any garment, clothing, wearing apparel, or household goods on which cleaning, pressing, glazing, or washing has been done, upon which alterations or repairs have been made, or on which materials or supplies have been used or furnished, remaining in the possession of a person, firm, partnership, limited liability company, or corporation for a period of ninety days or more, may be sold to pay the reasonable or agreed charges and the costs of notifying the owner or owners. The person, firm, partnership, limited liability company, or corporation to whom such charges are payable and owing shall first notify the owner or owners of the time and place of such sale. Property that is to be placed in storage after any of the services or labors mentioned in this section shall not be affected by the provisions of this section.

Source: Laws 1943, c. 120, § 1, p. 416; R.S.1943, § 52-801; Laws 1993, LB 121, § 309.

52-802 Clothing; household goods; storage; sale; notice.

All garments, clothing, wearing apparel, or household goods placed in storage or on which any of the services or labors mentioned in section 52-801

have been performed and then placed in storage by agreement and remaining in the possession of a person, firm, partnership, limited liability company, or corporation without the reasonable or agreed charges having been paid for a period of twelve months may be sold to pay the charges. The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall first notify the owner or owners thereof of the time and place of such sale. Persons, firms, partnerships, limited liability company, or corporations operating as warehouses or warehousemen shall not be affected by this section.

Source: Laws 1943, c. 120, § 2, p. 416; R.S.1943, § 52-802; Laws 1993, LB 121, § 310.

52-803 Sale; notice to owner; registered or certified mail; time of mailing.

The posting or mailing of either a registered or certified letter, with a return address marked thereon, addressed to the owner or owners at his, her, its, or their address, given at the time of the delivery of the article or articles to a person, firm, partnership, limited liability company, or corporation to render any of the services or labors as set out in sections 52-801 to 52-806, stating the time and place of sale, shall constitute notice under such sections. The notice shall be posted or mailed at least thirty days before the date of sale. The costs of posting or mailing the letter shall be added to the charges.

Source: Laws 1943, c. 120, § 3, p. 417; R.S.1943, § 52-803; Laws 1957, c. 242, § 44, p. 855; Laws 1993, LB 121, § 311.

52-804 Sale; disposition of proceeds; when payable to owner.

The person, firm, partnership, limited liability company, or corporation to whom the charges are payable shall (1) deduct the charges due plus the costs of notifying the owner and the costs, if any, of publishing the notice of sale from the proceeds of such sale, (2) hold the overplus, if any, subject to the order of the owner, (3) immediately thereafter mail to the owner or owners thereof at such owner's or owners' address, if known, a notice stating the sale has been had, and (4) the amount of overplus, if any, due such owner or owners and, at any time within twelve months, upon demand by the owner or owners pay to the owner or owners the balance or overplus in the hands of such person, firm, partnership, limited liability company, or corporation.

Source: Laws 1943, c. 120, § 4, p. 417; R.S.1943, § 52-804; Laws 1993, LB 121, § 312.

52-805 Notice to be posted in place of business.

All persons, firms, partnerships, limited liability companies, or corporations taking advantage of sections 52-801 to 52-806 must keep posted at all times in a prominent place in their receiving office or offices two notices which shall read as follows: All articles cleaned, pressed, glazed, laundered, washed, altered, or repaired and not called for in ninety days will be sold to pay charges. All articles which are stored by agreement and upon which the charges are not paid for twelve months will be sold to pay charges.

Source: Laws 1943, c. 120, § 5, p. 417; R.S.1943, § 52-805; Laws 1993, LB 121, § 313.

52-806 Sale; where; when; notice by publication; notice by posting; contents.

The sale of garments, clothing, wearing apparel or household goods, for failure to pay any of the charges provided for in sections 52-801 and 52-802, shall be held at the place where the work was done or the goods described therein were stored or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place, after the time for the payment of the claim, specified in the notice to the debtor, has lapsed and an advertisement or notice of sale has been published or posted as hereinafter provided. Notice of such sale shall be given by publication two successive weeks in a legal newspaper, of general circulation in the community in which such sale is to be held, or by posting such notice in not less than three conspicuous places in such community. Such notice of sale shall state the name of the owner or owners or the person or persons on whose account the goods are held, the nature of the personal property to be sold and the time and place of sale. The sale shall be held not less than fifteen days after the first publication or posting of such notice.

Source: Laws 1943, c. 120, § 6, p. 418; R.S.1943, § 52-806.

ARTICLE 9

PETROLEUM PRODUCTS LIEN

Section

- 52-901. Lien; scope.
- 52-902. Lien; perfection; financing statement; filing; fee.
- 52-903. Lien; effect of filing; sale of crop, effect; enforcement.
- 52-904. Lien; innocent purchaser protected; not applicable to landlord's share; not assignable.
- 52-905. Lien satisfied; financing statement; termination.

52-901 Lien; scope.

Any person who furnishes gasoline, diesel fuel, tractor fuel, oil, grease, or other petroleum products to another to be used in farm machinery for power or lubricating purposes in the production of any agricultural crop shall be entitled to a lien upon all such crops produced and owned by the person to whom such fuel or lubricant was furnished to secure the payment of the purchase price thereof, upon compliance with sections 52-901 to 52-904.

Source: Laws 1957, c. 226, § 1, p. 775; Laws 2001, LB 54, § 9.

Cattle may not be included within the meaning of "crops" as set out in statute providing that any person who furnishes petroleum products to another to be used in farm machinery for the production of any agricultural crops shall be entitled to a lien upon all such crops produced. O'Neill Production Credit Assn. v. Schnoor, 208 Neb. 105, 302 N.W.2d 376 (1981).

52-902 Lien; perfection; financing statement; filing; fee.

A lien created under section 52-901 shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within six months after the fuel or lubricant was furnished and shall contain or have attached thereto (1) the name and address and the social security number or federal tax identification number of the person 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 such fuel or lubricant was furnished for use in farm machinery in the production of crops, (3) the amount of fuel or lubricant furnished, and (4) the amount due for furnishing such fuel or lubricant. 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

fuel or lubricant was furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Source: Laws 1957, c. 226, § 2, p. 775; Laws 1984, LB 808, § 4; Laws 1988, LB 943, § 7; Laws 1998, LB 1321, § 83; Laws 1999, LB 550, § 18; Laws 2001, LB 54, § 10.

This section requires a provider of petroleum products to file his lien within six months after the fuel or lubricants are provided. Circle 76 Fertilizer v. Nelsen, 219 Neb. 661, 365 N.W.2d 460 (1985).

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. 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.

Purchase price, under this section, means more than money and may include credits applied to a debt. Galyen Petroleum Co. v. Svoboda, 222 Neb. 268, 383 N.W.2d 49 (1986). days after the filing of the lien. Circle 76 Fertilizer v. Nelsen, 219 Neb. 661, 365 N.W.2d 460 (1985).

Under former law, this section required that proceedings to foreclose a petroleum products lien be instituted within thirty

52-904 Lien; innocent purchaser protected; not applicable to landlord's share; not assignable.

A lien created under section 52-901 shall not attach to any portion of such crops, in the hands of an innocent purchaser or dealer in the usual course of trade, unless all the notices provided for shall have been given. In the event the fuel or lubricant was furnished to a person on rented or leased land, the lien shall not apply to the landlord's or lessor's share of the crops produced. The lien shall not be assignable.

Source: Laws 1957, c. 226, § 4, p. 776; Laws 2001, LB 54, § 12.

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

- 52-1001. Federal liens; notice; filing.
52-1002. Certifications; filing.
52-1003. Notice; filing officer; duties; liability.
52-1004. Notice; filing; fees; billing.
52-1005. Lien, notice, certificate; filed on or before January 1, 1970; filing officer; duties.
52-1006. Act, how construed.
52-1007. Act, how cited.
52-1008. Lien satisfied; termination statement; procedure.

52-1001 Federal liens; notice; filing.

(1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be presented in the office of the Secretary of State and may be presented by electronic means. Such notices of liens and certificates and notices affecting the liens shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien or certificate or notice affecting the lien. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(2) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the Secretary of State and may be filed by electronic means.

Source: Laws 1969, c. 433, § 1, p. 1456; Laws 1971, LB 89, § 1; Laws 1988, LB 933, § 3; Laws 1993, LB 121, § 314; Laws 1998, LB 1321, § 84; Laws 1999, LB 550, § 21.

52-1002 Certifications; filing.

Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his or her delegate or by any official or entity of the United States responsible for filing or certifying notice of any other lien shall entitle them to be filed, and no other attestation, certification, or acknowledgment shall be necessary.

Source: Laws 1969, c. 433, § 2, p. 1457; Laws 1988, LB 933, § 4.

52-1003 Notice; filing officer; duties; liability.

(1)(a) If a notice of federal lien upon real property, a refiling of a notice of federal lien upon real property, or a notice of revocation of any certificate described in subdivision (2)(a) of this section is transmitted to the register of deeds, he or she shall endorse thereon his or her identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director or title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a notice of federal lien upon personal property, a refiling of a notice of federal lien upon personal property, or a notice of revocation of any certificate described in subdivision (2)(b) of this section is filed in the office of the Secretary of State, he or she shall endorse thereon his or her identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director or title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2)(a) If a refiled notice of federal lien referred to in subdivision (1)(a) of this section is transmitted for filing to the register of deeds as specified in subsection (1) of section 52-1001, he or she shall file the refiled notice or the certificate with the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in an alphabetical lien index on the line where the original notice of lien is entered.

(b) If a refiled notice of federal lien referred to in subdivision (1)(b) of this section is filed in the office of the Secretary of State as specified in subsection (2) of section 52-1001, he or she shall file the refiled notice or the certificate and cross reference the original notice of lien on the state's central index system and shall enter the refiled notice or the certificate with the date of filing in an alphabetical lien index.

(3)(a) Upon request of any person, the register of deeds shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien, filed under the Uniform Federal Tax Lien Registration Act on or after January 1, 1970, or under the Uniform Federal Lien Registration Act on or after July 9, 1988, naming a particular person and, if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate shall be one dollar and fifty cents. Upon request the register of deeds shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of one dollar per page.

(b)(i) Prior to July 1, 2001, upon the request of any person, the Secretary of State shall provide information as provided in section 9-411, Uniform Commercial Code, and charge such fees provided in such section, on any notice of lien or certificate or notice affecting any lien filed under the Uniform Federal Lien Registration Act on or after July 1, 1999.

(ii) On and after July 1, 2001, upon the request of any person, the Secretary of State shall provide information as provided in the Uniform Commercial Code and charge such fees provided in section 9-525, Uniform Commercial Code, on any notice of lien or certificate or notice affecting any lien filed under the Uniform Federal Lien Registration Act on or after July 1, 1999.

(4) The register of deeds and his or her employees or the Secretary of State and his or her 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.

Source: Laws 1969, c. 433, § 3, p. 1457; Laws 1971, LB 89, § 2; Laws 1973, LB 224, § 9; Laws 1988, LB 933, § 5; Laws 1998, LB 1321, § 85; Laws 1999, LB 550, § 22.

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.

52-1005 Lien, notice, certificate; filed on or before January 1, 1970; filing officer; duties.

Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before January 1, 1970, shall, after that date, continue to maintain a file labeled: Federal Tax Lien Notices Filed Prior to January 1, 1970; containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before January 1, 1970, any certificate or notice affecting the lien shall be filed in the same office.

Source: Laws 1969, c. 433, § 5, p. 1459.

52-1006 Act, how construed.

The Uniform Federal Lien Registration Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of such act among states enacting it.

Source: Laws 1969, c. 433, § 6, p. 1459; Laws 1988, LB 933, § 7.

52-1007 Act, how cited.

Sections 52-1001 to 52-1008 shall be known and may be cited as the Uniform Federal Lien Registration Act.

Source: Laws 1969, c. 433, § 7, p. 1459; Laws 1988, LB 933, § 8.

52-1008 Lien satisfied; termination statement; procedure.

When a federal lien registered pursuant to the Uniform Federal Lien Registration Act is satisfied, the holder of the lien may on written demand by the debtor send the debtor a termination statement to the effect that he or she no

longer claims a security interest under the lien, which shall be identified by file number.

On presentation to the register of deeds or to the Secretary of State of such a termination statement, he or she shall note it in the index. If the register of deeds or the Secretary of State has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the lienholder stamped to show the time of receipt.

Source: Laws 1985, LB 606, § 14; Laws 1988, LB 933, § 9; Laws 1998, LB 1321, § 87; Laws 1999, LB 550, § 24.

ARTICLE 11

FERTILIZER AND AGRICULTURAL CHEMICAL LIENS

Section

- 52-1101. Lien; scope.
 52-1102. Lien; perfection; financing statement; filing; fee.
 52-1103. Lien; time for filing; date of attachment; enforcement.
 52-1104. Lien satisfied; financing statement; termination.

52-1101 Lien; scope.

A person, including a firm or corporation, who contracts or agrees with another (1) to furnish any fertilizer, soil conditioner, or agricultural chemical, (2) to furnish machinery and equipment for the application of such products, or (3) to perform work or labor in the application of such products shall have a lien for the agreed charges, or in the absence of an agreement, for the reasonable charges and costs of satisfying such lien, upon the crops produced within one year upon the land where such product was applied, the machinery or equipment for application was used, or the work or labor of application was performed, upon the proceeds from the sale of the crops, and upon livestock and the proceeds from the sale of such livestock when the crops have been fed to such livestock in a way that the identity of the crops has been lost.

Source: Laws 1977, LB 218, § 1; Laws 1999, LB 550, § 25; Laws 2001, LB 54, § 14.

Under this section, a valid fertilizer lien is created at the time products, labor, or machinery is supplied, and section 52-1103 establishes the priority of that lien. A lien must be filed within sixty days of the delivery, or that lien, though still valid on crops

produced within one year of the date the product was supplied and on proceeds for the sale of such crops, will not have priority over subsequent lienholders. Commerce Sav. Scottsbluff v. F.H. Schafer Elev., 231 Neb. 288, 436 N.W.2d 151 (1989).

52-1102 Lien; perfection; financing statement; filing; fee.

A lien created under section 52-1101 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 (1) the name and address and the social security number or federal tax identification number, if known, of the person to whom any product, machinery, or equipment was furnished or for whom work or labor was performed, (2) the name and address and the social security number or federal tax identification number of the person claiming the lien, (3) the last date upon which such product, machinery, or equipment was furnished or work or labor was performed under the contract, and (4) the amount due for the product, machinery, or equipment furnished or work or labor performed. 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 product, machinery, or

equipment was furnished or for whom the work or labor was performed. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Source: Laws 1977, LB 218, § 2; Laws 1984, LB 808, § 6; Laws 1988, LB 943, § 9; Laws 1998, LB 1321, § 88; Laws 1999, LB 550, § 26; Laws 2001, LB 54, § 15.

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 one hundred twenty 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; Laws 2021, LB177, § 1. Effective date August 28, 2021.

Under section 52-1101, a valid fertilizer lien is created at the time products, labor, or machinery is supplied, and this section establishes the priority of that lien. A lien must be filed within sixty days of the delivery, or that lien, though still valid on crops produced within one year of the date the product was supplied and on proceeds for the sale of such crops, will not have priority over subsequent lienholders. Commerce Sav. Scottsbluff v. F.H. Schafer Elev., 231 Neb. 288, 436 N.W.2d 151 (1989).

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

- 52-1201. Lien on crops; authorized.
- 52-1202. Lien; perfection; financing statement; filing; fee.
- 52-1203. Lien; date of attachment; enforcement.
- 52-1204. Lien; priority.
- 52-1205. Lien satisfied; financing statement; termination.

52-1201 Lien on crops; authorized.

Any person, including any public power district, cooperative, firm, or corporation, who contracts or agrees to furnish (1) seed to be sown or planted or (2) electrical power or energy, or both, used in the production of crops shall have a lien upon all crops produced from the seed furnished or produced with the electrical power or energy furnished to secure the payment of the purchase price of the seed or the cost of the electrical power or energy used.

Source: Laws 1985, LB 503, § 1; Laws 2001, LB 54, § 18.

52-1202 Lien; perfection; financing statement; filing; fee.

(1) A lien created under section 52-1201 shall be perfected as provided in article 9, Uniform Commercial Code. Such lien shall be perfected within one hundred twenty days after the last date on which (a) the seed was furnished or (b) the meter was read with respect to the electrical power or energy furnished.

(2) Any financing statement filed to perfect a lien created under section 52-1201 shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person to whom the seed or electrical power or energy was furnished, (c) the contract price or reasonable value of the seed or electrical power or energy, and (d)(i) the type and amount of the seed and the date of delivery of the seed or (ii) the type and amount of the electrical power or energy and the period during which such power or energy was 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 seed or electrical power or energy was furnished. The fee for filing, amending, or releasing the lien shall be as provided in section 9-525, Uniform Commercial Code.

Source: Laws 1985, LB 503, § 2; Laws 1988, LB 943, § 11; Laws 1998, LB 1321, § 89; Laws 1999, LB 550, § 29; Laws 2001, LB 54, § 19; Laws 2021, LB177, § 2.
Effective date August 28, 2021.

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.

52-1204 Lien; priority.

A lien created under section 52-1201 shall have its priority established by the date and time of filing and shall not be prior to a properly attached and perfected lien or security interest created under the Uniform Commercial Code unless such priority shall be agreed upon in writing by the prior attached and perfected lienholder or secured party.

Source: Laws 1985, LB 503, § 4; Laws 2001, LB 54, § 21.

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	
52-1301.	Legislative intent.
52-1302.	Definitions, where found.
52-1302.01.	Approved unique identifier, defined.
52-1303.	Buyer in the ordinary course of business, defined.
52-1304.	Central filing system, defined.
52-1305.	Commission merchant, defined.
52-1306.	Debtor, defined.
52-1307.	Effective financing statement, defined.
52-1308.	Farm product, defined.
52-1309.	Person, defined.
52-1310.	Security interest, defined.
52-1311.	Selling agent, 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.
52-1314.	Filing of continuation statement; requirements; insolvency proceedings; effect.
52-1315.	Notice of lapse of effective financing statement; waiver of notice; effect.
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.
52-1319.	Receipt of written notice, defined.
52-1320.	Buyer subject to security interest; when; waiver or release.
52-1321.	Filing prior to December 24, 1986; effect.
52-1322.	Filing prior to July 1, 1999; effect.

52-1301 Legislative intent.

It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products produced or located in the State of Nebraska which are included in the central filing system.

Source: Laws 1986, Third Spec. Sess., LB 1, § 1; Laws 2007, LB124, § 58.

Sections 52-1301 through 52-1321 were not intended to re-move regular U.C.C. provisions regarding the creation, perfec-tion, or priority of security interests. Battle Creek State Bank v. Preusker, 253 Neb. 502, 571 N.W.2d 294 (1997).

52-1302 Definitions, where found.

For purposes of sections 52-1301 to 52-1322, unless the context otherwise requires, the definitions found in sections 52-1302.01 to 52-1311 shall be used.

Source: Laws 1986, Third Spec. Sess., LB 1, § 2; Laws 1998, LB 924, § 19; Laws 2003, LB 4, § 1; Laws 2007, LB124, § 59.

52-1302.01 Approved unique identifier, defined.

Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection

system or method approved by the Secretary of the United States Department of Agriculture.

Source: Laws 2007, LB124, § 60.

52-1303 Buyer in the ordinary course of business, defined.

Buyer in the ordinary course of business shall mean a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

Source: Laws 1986, Third Spec. Sess., LB 1, § 3.

52-1304 Central filing system, defined.

Central filing system shall mean the system for filing effective financing statements or notice of such financing statements established pursuant to section 52-1312 pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198.

Source: Laws 1986, Third Spec. Sess., LB 1, § 4.

52-1305 Commission merchant, defined.

Commission merchant shall mean any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

Source: Laws 1986, Third Spec. Sess., LB 1, § 5.

52-1306 Debtor, defined.

Debtor shall mean the person subjecting a farm product to a security interest.

Source: Laws 1986, Third Spec. Sess., LB 1, § 6.

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.

52-1309 Person, defined.

Person shall mean any individual, partnership, limited liability company, corporation, trust, or any other business entity.

Source: Laws 1986, Third Spec. Sess., LB 1, § 9; Laws 1993, LB 121, § 315.

52-1310 Security interest, defined.

Security interest shall mean an interest in farm products that secures payment or performance of an obligation.

Source: Laws 1986, Third Spec. Sess., LB 1, § 10.

52-1311 Selling agent, defined.

Selling agent shall mean any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

Source: Laws 1986, Third Spec. Sess., LB 1, § 11.

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 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.

Sections 52-1301 through 52-1321 were not intended to remove regular U.C.C. provisions regarding the creation, perfection, or priority of security interests. *Battle Creek State Bank v. Preusker*, 253 Neb. 502, 571 N.W.2d 294 (1997).

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.

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.

52-1314 Filing of continuation statement; requirements; insolvency proceedings; effect.

(1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding

continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Source: Laws 1986, Third Spec. Sess., LB 1, § 14; Laws 1999, LB 552, § 2; Laws 2002, LB 1105, § 440; Laws 2007, LB124, § 65.

52-1315 Notice of lapse of effective financing statement; waiver of notice; effect.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Source: Laws 1986, Third Spec. Sess., LB 1, § 15; Laws 1988, LB 943, § 14; Laws 1998, LB 1321, § 93; Laws 2007, LB124, § 66.

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.

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.

52-1319 Receipt of written notice, defined.

For purposes of section 1324 of the Food Security Act of 1985, Public Law 99-198, receipt of written notice shall mean the date the notice is actually received by a buyer in the ordinary course of business or the first date upon which delivery is attempted by a carrier. A buyer in the ordinary course of business shall act in good faith. In all cases a buyer in the ordinary course of business shall be presumed to have received the notice ten days after it was mailed.

Source: Laws 1986, Third Spec. Sess., LB 1, § 19.

52-1320 Buyer subject to security interest; when; waiver or release.

(1) A buyer in the ordinary course of business buying farm products covered by the central filing system shall take subject to the security interest identified under such system, except that a registrant or a buyer in the ordinary course of business making an inquiry under section 52-1316 shall not take subject to the security interest if the central filing system does not correctly identify the debtor.

(2) A buyer in the ordinary course of business buying farm products covered by an effective financing statement takes free of any security interest on such products if such buyer secures a waiver or release of the security interest specified in such effective financing statement from the secured party. If a buyer in the ordinary course of business buying farm products covered by the central filing system tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and each security interest holder of the seller identified in the central filing system for such products and if such security interest holder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the security interest specified to the extent of the amount of the instrument. Such waiver or release of the security interest shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

Source: Laws 1986, Third Spec. Sess., LB 1, § 20.

52-1321 Filing prior to December 24, 1986; effect.

An effective financing statement filed prior to December 24, 1986, shall be considered as filed on such date.

Source: Laws 1986, Third Spec. Sess., LB 1, § 21.

Sections 52-1301 through 52-1321 were not intended to remove regular U.C.C. provisions regarding the creation, perfection, or priority of security interests. *Battle Creek State Bank v. Preusker*, 253 Neb. 502, 571 N.W.2d 294 (1997).

52-1322 Filing prior to July 1, 1999; effect.

An effective financing statement filed on or before July 1, 1999, in accordance with section 52-1307, which has not lapsed on or before July 1, 1999, may be continued by the filing of a continuation statement in accordance with section 52-1314 in the office of the Secretary of State.

Source: Laws 1998, LB 1321, § 95.

ARTICLE 14**AGRICULTURAL PRODUCTION LIENS**

Section

- 52-1401. Terms, defined.
- 52-1402. Lien-notification statement; requirements; contents.
- 52-1403. Lien-notification statement; lender response.
- 52-1404. Lender response; effect.
- 52-1405. Lender; failure to respond; effect.
- 52-1406. Lien; attachment; when.
- 52-1407. Lien; perfection; financing statement; filing; priority; enforcement; fee.
- 52-1408. Lien; enforcement procedures; extinguishment.
- 52-1409. Lien satisfied; financing statement; termination.
- 52-1410. Sections, how construed.
- 52-1411. Bankruptcy; effect.

52-1401 Terms, defined.

As used in sections 52-1401 to 52-1411, unless the context otherwise requires:

- (1) Agricultural chemical shall mean a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops;
- (2) Feed shall mean a commercial feed, a feed ingredient, a mineral feed, a drug, an animal health product, or a customer-formula feed which is used for the feeding of livestock;
- (3) Petroleum product shall mean motor vehicle fuel, oil, grease, propane or other compressed fuel, and diesel fuel which is used in the production of crops and livestock;
- (4) Seed shall mean agricultural seed which is used in the production of crops;
- (5) Electricity shall mean electrical energy which is used in the production of crops and livestock;
- (6) Labor shall mean labor performed in the application, delivery, or preparation of a product defined in subdivisions (1) through (4) of this section;
- (7) Person shall mean an individual, partnership, limited liability company, corporation, company, cooperative, society, or association;
- (8) Lender shall mean a person in the business of lending money identified in a lien-notification statement;
- (9) Letter of commitment shall mean a binding, irrevocable, and unconditional agreement by a lender to honor drafts or other demands for payment upon the supplier presenting invoices signed by the purchaser or other proof of delivery; and
- (10) Agricultural production input shall mean any agricultural chemical, feed, seed, petroleum product, electricity, or labor used in preparing the land

for planting, cultivating, growing, producing, harvesting, drying, and storing crops or crop products or for feeding, producing, or delivering livestock.

Source: Laws 1987, LB 101, § 1; Laws 1993, LB 121, § 316; Laws 1994, LB 1160, § 52; Laws 1995, LB 182, § 25.

52-1402 Lien-notification statement; requirements; contents.

(1) A person supplying an agricultural production input may notify a lender of an agricultural production input lien by providing a lien-notification statement to the lender in an envelope marked IMPORTANT — LEGAL NOTICE and sent by certified mail or another verifiable method.

(2) The lien-notification statement shall be in the form approved by the Secretary of State and shall disclose the following:

(a) The name and business address of any lender;

(b) The name, address, and signature of the supplier claiming the lien;

(c) A description and the date or anticipated date or dates of the transaction or transactions and the retail cost or anticipated costs of the agricultural production input;

(d) The name, residential address, and signature of the person to whom the agricultural production input was furnished or is to be furnished;

(e) The name and residential address of the owner and a description of the real estate sufficient to identify the same where the crops to which the lien attaches are growing or are to be grown or, if livestock, the name and residential address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock;

(f) A statement that the products and proceeds of the crops or livestock are covered by the agricultural input lien;

(g) The social security number or federal tax identification number of the person to whom the agricultural production input was furnished, if known; and

(h) The social security number or federal tax identification number of the supplier claiming the lien.

Source: Laws 1987, LB 101, § 2; Laws 1988, LB 943, § 15.

52-1403 Lien-notification statement; lender response.

Within fifteen calendar days after receiving a lien-notification statement, the lender shall respond to the supplier with either:

(1) A letter of commitment for part or all of the amount in the lien-notification statement and, if the letter of commitment is for only part of the amount in the lien-notification statement, then a copy of the partial commitment shall be sent to the person to whom the agricultural production input was furnished or is to be furnished; or

(2) A written refusal to issue a letter of commitment, and a copy of such refusal shall be sent to the person to whom the agricultural production input was furnished or is to be furnished.

Source: Laws 1987, LB 101, § 3.

52-1404 Lender response; effect.

If the lender responds with a letter of commitment, the supplier may not obtain a lien for the amount stated in the letter of commitment. If the lender responds with a written refusal to issue a letter of commitment, the rights of the lender and the supplier are not affected by sections 52-1401 to 52-1411, and any prior perfected lien of the lender under the Uniform Commercial Code shall retain its established priority.

Source: Laws 1987, LB 101, § 4.

52-1405 Lender; failure to respond; effect.

If a lender does not respond to the supplier within fifteen calendar days after receiving the lien-notification statement:

(1) If the agricultural production input is feed for livestock, a supplier who furnishes the feed has an agricultural production input lien which has priority over any security interest of the lender for the unpaid retail cost of such feed. Such lien may not exceed the amount, if any, that the sales price of the livestock exceeds the greater of the fair market value of the livestock at the time the lien attaches or the acquisition price of the livestock; or

(2) For all other agricultural production input, a supplier who furnishes such agricultural production input has an agricultural production input lien which has priority over any security interest of the lender in the specified crops or their proceeds for the lesser of:

(a) The amount stated in the lien-notification statement; or

(b) The unpaid retail cost of the agricultural production input identified in the lien-notification statement.

Source: Laws 1987, LB 101, § 5.

52-1406 Lien; attachment; when.

(1) The agricultural production input lien attaches to:

(a) The existing crops upon the land where a furnished agricultural chemical was applied or, if crops are not planted, the next production crop where a furnished agricultural chemical was applied within sixteen months following the last date on which the agricultural chemical was applied;

(b) The crops produced from furnished seed;

(c) The crops produced, harvested, or processed using a furnished petroleum product or furnished electricity. If the crops are grown on leased land and the lease provides for payment in crops, the lien does not attach to the lessor's portion of the crops. The lien continues in crop products and proceeds, except the lien does not continue in grain after a cash sale; or

(d) All livestock consuming the feed and continues in livestock products and proceeds.

(2) An agricultural production input lien attaches when the agricultural production input is furnished by the supplier to the purchaser.

Source: Laws 1987, LB 101, § 6.

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.

52-1408 Lien; enforcement procedures; extinguishment.

An action to enforce an agricultural production input lien may be brought in the district court in a county where some part of the crop or livestock was located after the lien is perfected. A lien-notification statement may be amended, except for the amount demanded, by leave of the court in the furtherance of justice. An agricultural production input lien is extinguished if an action to enforce the lien is not brought within eighteen months after the date the lien-notification statement is filed.

Source: Laws 1987, LB 101, § 8.

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.

52-1410 Sections, how construed.

Nothing in sections 52-1401 to 52-1410 shall be construed to negate or affect the provisions of Chapter 52, articles 2, 5, 7, 9, 11, 12, and 15, and Chapter 54, article 2.

Source: Laws 1987, LB 101, § 10.

52-1411 Bankruptcy; effect.

The filing of a petition for relief under any bankruptcy law of the United States shall render any unperformed letter of commitment under sections 52-1401 to 52-1408 null and void.

Source: Laws 1987, LB 101, § 11.

ARTICLE 15**SERVICE OF ANIMALS**

Section

- 52-1501. Stallion, jack, or bull; lien for service.
- 52-1502. Liens; list of animals served; filing.
- 52-1503. Lien; period enforceable.
- 52-1504. Lien; foreclosure.
- 52-1505. Lien; sale or removal of animals prohibited; exception.
- 52-1506. Violations; penalty.

52-1501 Stallion, jack, or bull; lien for service.

Every owner, lessee, agent or manager of any stallion, jack or bull shall have a lien upon any mare and her colt or upon any cow and her calf served by such stallion, jack or bull for the full amount of the reasonable or agreed value or price of such service. Every such owner, lessee, agent or manager of such stallion, jack or bull desiring to perfect a lien upon any mare and her colt, or upon any cow and her calf, shall at any time after breeding any such animal to any such male, file with the county clerk of the county a verified notice of lien describing such animal with reasonable certainty, giving the name of the owner and his place of residence if known, and the name and residence of the person having the possession of such animal, the location of such animal, the terms of payment for such service, the amount thereof, the name of the male, the date of service, and the time or event when the same shall become due and payable and such other matters as to make the same more certain. Thereafter such lienor shall have a first lien upon such animal or animals described therein, and their offspring as soon as the same may be born, subject, however, to the lien of record of any prior mortgage in good faith.

Source: Laws 1913, c. 49, § 1, p. 155; R.S.1913, § 90; C.S.1922, § 98; C.S.1929, § 54-202; R.S.1943, § 54-202; R.S.1943, (1984), § 54-202.

52-1502 Liens; list of animals served; filing.

Any owner of any stallion, jack or bull within the state may file with the county clerk of any county therein on or before October 1 of each year, a full and complete list of the mares or cows served by such male within such county during that year. Such list shall contain the name of and a brief description of all animals so served, the owners thereof, the terms on which each was bred, and the time when payment thereof becomes due; and it shall be verified by the owner of such stallion, jack or bull, or his lawfully authorized agent.

Source: Laws 1913, c. 49, § 2, p. 156; R.S.1913, § 91; C.S.1922, § 99; C.S.1929, § 54-203; R.S.1943, § 54-203; R.S.1943, (1984), § 54-203.

52-1503 Lien; period enforceable.

From the time of filing such lien upon any such mare or cow the lienor shall have the right to hold the same on such mare or cow and its offspring for a period of twelve months from and after the birth of such offspring; but if such lien shall not be foreclosed within that time the same shall expire and be of no force or effect.

Source: Laws 1913, c. 49, § 3, p. 156; R.S.1913, § 92; C.S.1922, § 100; C.S.1929, § 54-204; Laws 1935, c. 120, § 1, p. 438; C.S.Supp.,1941, § 54-204; R.S.1943, § 54-204; R.S.1943, (1984), § 54-204.

52-1504 Lien; foreclosure.

Every such lienor may foreclose such lien by delivering to any sheriff or constable a true copy of such lien certified by the clerk of the county, together with an affidavit of the lienor or any agent or attorney having knowledge of the facts, stating the amount due and unpaid on such lien, with direction to such officer to foreclose such lien. Thereupon such officer shall seize such mare or cow and its offspring and sell the same in the manner provided by law for the sale of personal property on execution, and retain the principal and interest and expenses of such seizure and sale, and the overplus, if any, pay over to the owner of such mare or cow, or deposit the same for him with the county clerk, and make and file due return thereof with the county clerk.

Source: Laws 1913, c. 49, § 4, p. 156; R.S.1913, § 93; C.S.1922, § 101; C.S.1929, § 54-205; R.S.1943, § 54-205; R.S.1943, (1984), § 54-205.

52-1505 Lien; sale or removal of animals prohibited; exception.

It shall be unlawful for any owner of any mare or cow or its offspring, or any person having the possession of such mare or cow, or its offspring, upon which there is any lien of record in the county, to sell or permanently remove the same from the county or state before said lien is paid; *Provided*, such owner may remove the same to an adjoining county by first filing in such adjoining county a certified copy of such lien and notifying such lienor in writing of the exact location of such mare or cow and its offspring in such adjoining county.

Source: Laws 1913, c. 49, § 5, p. 156; R.S.1913, § 94; C.S.1922, § 102; C.S.1929, § 54-206; R.S.1943, § 54-206; R.S.1943, (1984), § 54-206.

52-1506 Violations; penalty.

Any person or persons knowingly or willfully violating any of the provisions of sections 52-1501 to 52-1505 shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars.

Source: Laws 1913, c. 49, § 6, p. 157; R.S.1913, § 95; C.S.1922, § 103; C.S.1929, § 54-207; R.S.1943, § 54-207; R.S.1943, (1984), § 54-207.

ARTICLE 16**MASTER LIEN LIST**

Section
52-1601. Master lien list; Secretary of State; compilation.

§ 52-1601

LIENS

Section

- 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.
- 52-1604. Errors or omissions; exempt from liability.
- 52-1605. Rules and regulations.

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.

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.

52-1604 Errors or omissions; exempt from liability.

The Secretary of State, all county clerks, and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information of such statutory liens except in cases of willful misconduct or gross negligence.

Source: Laws 1988, LB 987, § 4.

52-1605 Rules and regulations.

The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1601 to 52-1605.

Source: Laws 1988, LB 987, § 5.

ARTICLE 17**SECURITY INTEREST IN RENTS**

Section

- 52-1701. Terms, defined.
- 52-1702. Assignment instrument; terms.
- 52-1703. Security interest; when valid.
- 52-1704. Security interest; perfection.
- 52-1705. Security interest; enforcement by assignee.
- 52-1706. Assignee; collection of rents; lease terms ineffective; when.
- 52-1707. Priority.
- 52-1708. Applicability of sections.

52-1701 Terms, defined.

For purposes of sections 52-1701 to 52-1708:

(1) Assignee shall mean the holder, and his or her successors and assigns, of a security interest in rents which has been created, provided, assigned, or granted by an assignor;

(2) Assignment instrument shall mean any mortgage, trust deed, assignment of leases, assignment of rents, or other instrument or agreement which creates, provides, assigns, or grants a security interest in rents;

(3) Assignor shall mean a person, and his or her successors and assigns, who has created, provided, assigned, or granted a security interest in rents to an assignee;

(4) Lease shall mean any license, lease, contract, or other agreement for the use or possession of real estate;

(5) Rent party shall mean the party that is obligated under a lease to pay rents;

(6) Rents shall mean any right to income, rents, proceeds, issues, profits, royalties, or any other payment or benefit derived under a present or future lease; and

(7) Security interest in rents shall mean any interest in rents or leases which secures payment or performance of an obligation.

Source: Laws 1993, LB 14, § 1.

52-1702 Assignment instrument; terms.

An assignment instrument may provide that any or all obligations covered by, described in, or identified by the assignment instrument are to be secured by present, future, or after-arising rents or leases. The obligations covered by, described in, or identified by an assignment instrument may include future advances or other value whether or not the future advances or value are given pursuant to an existing commitment to loan additional funds.

Source: Laws 1993, LB 14, § 2.

52-1703 Security interest; when valid.

A security interest in rents shall be valid and binding between the parties to an assignment instrument upon the execution and delivery of the assignment instrument by the assignor to the assignee.

Source: Laws 1993, LB 14, § 3.

52-1704 Security interest; perfection.

A security interest in rents shall be perfected upon the recording of an assignment instrument with the register of deeds in the county in which the real estate, or any part thereof, described in the assignment instrument is situated. Upon the recording of the assignment instrument, the security interest in rents shall be valid, enforceable, and binding against, unavoidable by, and fully perfected as to all parties, including any subsequent purchaser, mortgagee, trustee in bankruptcy, general creditor, lien creditor, and other lienholder or claimant, from the time of the recording of the assignment instrument. It shall not be necessary for an assignee to take actual or constructive possession or control of the real estate or rents related thereto, to secure the appointment of a receiver, to take any action tantamount to taking of such possession or control, or to take any other action whatsoever to perfect a security interest in rents.

Source: Laws 1993, LB 14, § 4.

52-1705 Security interest; enforcement by assignee.

An assignee may enforce a security interest in rents by (1) the appointment of a receiver under applicable law, (2) the recovery of rents as part of the enforcement of an assignment instrument, or (3) as provided in section 52-1706 or under other applicable law. The collection of rents by an assignee in accordance with section 52-1706 shall not be deemed to impose the obligations of a mortgagee or any other person in possession of the real estate on the assignee.

Source: Laws 1993, LB 14, § 5.

52-1706 Assignee; collection of rents; lease terms ineffective; when.

If agreed in an assignment instrument or on default by the assignor whether agreed in the assignment instrument or not, the assignee shall be entitled to notify any rent party to make payment of rents due or to become due to the assignee whether or not the assignor was previously receiving or collecting rents. A rent party may pay rents to the assignor until the rent party receives notification that the rents due or to become due have been assigned and that payment is to be made to the assignee. If requested by the rent party, the assignee shall furnish reasonable proof that the assignment has been made, and unless the assignee furnishes the proof, the rent party may pay the assignor. A term in any lease between a rent party and an assignor is ineffective if it prohibits assignment of a lease or rents due or to become due pursuant to the lease, if it prohibits creation of a security interest in rents due or to become due, or if it requires the consent of the rent party to such assignment or a security interest in rents.

Source: Laws 1993, LB 14, § 6.

52-1707 Priority.

Priority between conflicting security interests in rents shall be ranked according to priority in the time of recording of an assignment instrument.

Source: Laws 1993, LB 14, § 7.

52-1708 Applicability of sections.

Sections 52-1701 to 52-1707 shall be applicable to any assignment instrument properly recorded prior to, on, or after February 17, 1993.

Source: Laws 1993, LB 14, § 8.

ARTICLE 18
MOBILE HOMES

Section

52-1801. Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

52-1801 Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

(1) Any security interest in a mobile home perfected on or after July 15, 1992, and prior to April 8, 1993, shall continue to be perfected:

(a) Until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code; or

(b) Until a lien is noted on the face of the certificate of title for the mobile home pursuant to section 60-164.

(2) Any lien noted on the face of a mobile home certificate of title on or after April 8, 1993, pursuant to subdivision (1)(b) of this section on behalf of the holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a mobile home certificate of title shall, upon request, surrender the mobile home certificate of title to a holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, to permit notation of a lien on the mobile home certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of a mobile home subject to a security interest perfected on or after July 15, 1992, and prior to April 8, 1993, fails or refuses to obtain a certificate of title after April 8, 1993, the security interest holder may obtain a certificate of title in the name of the owner of the mobile home following the procedures of subsection (2) of section 60-147 and may have a lien noted on the certificate of title pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in a mobile home shall be governed under the laws under which it was perfected.

(6) This section shall not affect the validity or priority of a lien established against a mobile home by the notation of such lien on the mobile home certificate of title prior to July 15, 1992.

Source: Laws 1993, LB 340, § 3; Laws 1999, LB 550, § 35; Laws 2005, LB 276, § 101.

ARTICLE 19

NONCONSENSUAL COMMON-LAW LIENS

Section

- 52-1901. Nonconsensual common-law lien, defined.
52-1902. Transferred to section 52-1907.
52-1903. Filing officer; duty to refuse.
52-1904. Lien; strike from record; when.
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.**52-1903 Filing officer; duty to refuse.**

The Secretary of State, county clerk, register of deeds, or clerk of any court shall refuse to accept for filing any nonconsensual common-law lien.

Source: Laws 2003, LB 655, § 3.

52-1904 Lien; strike from record; when.

Any lien determined to be a nonconsensual common-law lien pursuant to any proceeding shall be stricken from the record of the Secretary of State, county clerk, register of deeds, or clerk of any court upon the issuing of a valid court order from a court of competent jurisdiction. There shall be no filing fee for a court order issued pursuant to this section.

Source: Laws 2003, LB 655, § 4.

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.

Section

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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2. Beer Distribution. 53-201 to 53-223.
3. Nebraska Grape and Winery Board. 53-301 to 53-305.
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5. Nebraska Craft Brewery Board. 53-501 to 53-505.

ARTICLE 1

NEBRASKA LIQUOR CONTROL ACT

Cross References

Constitutional provisions:

- License fees, disposition of, see Article VII, section 5, Constitution of Nebraska.
- Licenses, powers of municipalities and counties, see Article XV, section 19, Constitution of Nebraska.
- Taxation, legislative powers, see Article VIII, section 1, Constitution of Nebraska.

Aircraft, operation under the influence of alcoholic liquor, prohibited, see sections 28-1465 to 28-1474.

Alcoholics:

- Jurors, challenges for cause in criminal cases, see section 29-2006.
- Military exemption of, see section 55-106.

Cigarette sales by vending machine on licensed premises, see section 28-1429.02.

Discrimination by licensees prohibited, see section 20-113.

Fairs, state, district, or county agricultural society, sale of liquor, see section 2-219.

Fire safety investigations of liquor establishments, State Fire Marshal, duties, see section 81-502.

Motor vehicles:

- Implied consent to blood, breath, or urine test, see sections 60-4,164 and 60-6,197 to 60-6,200.
- Nebraska Liquor Control Commission inspectors' vehicles, exemption from state marking requirements, see section 81-1021.
- Operation under the influence of alcoholic liquor, see sections 60-6,196 to 60-6,211.09.
 - Commercial motor vehicle, see sections 60-4,163 to 60-4,168.
 - Military, court-martial offense, see section 55-470.
 - Minors, zero tolerance, see sections 60-6,211.01 to 60-6,211.07.
- Points, operator's license, see section 60-4,182.

Pickle card operator, liquor licensee eligibility, see section 9-329.03.

Poisons, sale or delivery to intoxicated persons prohibited, see section 71-2508.

Roadhouse, defined, see section 23-818.

Schools:

- Instruction on effect of alcoholic drinks required, see section 79-712.
- Students, possession, sale, dispensing, or use, grounds for discipline, when, see section 79-267.

Sickness and accident insurance policies, standard provision relating to use of intoxicants by insured, see section 44-710.04.

Snowmobile, operation under the influence of alcoholic liquor, prohibited, see section 60-6,337.

State Lottery tickets, prohibition on sales by certain licensees, see section 9-823.

Voter registration, deputy registrar, penalty for bringing liquor into registration site, see section 32-1505.

(a) GENERAL PROVISIONS

Section

- 53-101. Act, how cited.
- 53-101.01. Statement of policy.
- 53-101.02. Farm wineries; legislative intent.

LIQUORS

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- 53-101.03. Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
- 53-101.04. Transferred to section 53-148.01.
- 53-101.05. Act to be liberally construed.
- 53-102. Transferred to section 53-168.06.
- 53-103. Definitions, where found.
- 53-103.01. Alcohol, defined.
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NEBRASKA LIQUOR CONTROL ACT

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53-112.02. Repealed. Laws 1959, c. 266, § 1.
53-112.03. Repealed. Laws 1989, LB 1, § 1.
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- (d) LICENSES; ISSUANCE AND REVOCATION
- 53-121. Repealed. Laws 2014, LB 863, § 31.
53-122. Sale of liquor by drink; license issuance authorized; exception.
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- 53-123.13. Farm winery; waiver of requirement; when; conditions.
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- 53-123.18. Special party bus license.
- 53-124. Licenses; types; classification; fees; where paid; license year.
- 53-124.01. Fees for annual licenses.
- 53-124.02. Holder of license under prior law; how treated.
- 53-124.03. Repealed. Laws 1986, LB 871, § 4.
- 53-124.04. Repealed. Laws 1986, LB 871, § 4.
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- 53-124.06. Repealed. Laws 1967, c. 333, § 1.
- 53-124.07. Repealed. Laws 1986, LB 871, § 4.
- 53-124.08. Repealed. Laws 1983, LB 213, § 21.
- 53-124.09. Repealed. Laws 1986, LB 871, § 4.
- 53-124.10. Repealed. Laws 1983, LB 213, § 21.
- 53-124.11. Special designated license; issuance; procedure; fee.
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- 53-125. Classes of persons to whom no license issued.
- 53-126. License to corporation; conditions.
- 53-127. Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.
- 53-128. Transferred to section 53-116.02.
- 53-129. Retail, bottle club, craft brewery, and microdistillery licenses; premises to which applicable; temporary expansion; procedure.
- 53-130. Licenses; manufacturers, wholesalers, railroads, airlines, boats, special party buses, pedal-pub vehicles, and nonbeverage users; conditions on issuance; fees; renewal.
- 53-130.01. Beer; manufacturers and shippers; file notice; contents.
- 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.
- 53-131.01. License; application; form; contents; criminal history record check; verification; false statement; penalty.
- 53-132. Retail, bottle club, craft brewery, or microdistillery license; commission; duties.
- 53-133. Retail, bottle club, craft brewery, and microdistillery licenses; hearing; when held; procedure.
- 53-134. Retail, bottle club, craft brewery, microdistillery, and entertainment district licenses; city and village governing bodies; county boards; powers, functions, and duties.
- 53-134.01. Class C license holder; limited bottling endorsement; application; fee; conditions of sale.
- 53-134.02. Local governing bodies; authority under act.
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53-134.04.	Violations by retail licensee or bottle club licensee; complaints of residents; hearings.
53-135.	Retail or bottle club licenses; automatic renewal; conditions.
53-135.01.	Retail licenses; bottle club licenses; renewal; notice.
53-135.02.	Licenses; renewal; no vested right.
53-136.	Cigar shops; legislative findings; legislative intent.
53-137.	Cigar shop license; prohibited acts; sign required; waiver signed by employee; form.
53-138.	Pedal-pub vehicle license; activities authorized; licensee; duties.
53-138.01.	Licenses; disposition of fees.
53-138.02.	Repealed. Laws 1991, LB 344, § 75.
53-138.03.	Nonprofit corporations; license; required.
53-139.	Retail licenses to restaurants and clubs; conditions.
53-140.	Transferred to section 53-117.07.
53-140.01.	Repealed. Laws 1991, LB 344, § 75; Laws 1991, LB 586, § 4.
53-141.	Repealed. Laws 1980, LB 848, § 25.
53-142.	Transferred to section 53-131.01.
53-143.	Repealed. Laws 1980, LB 848, § 25.
53-144.	Repealed. Laws 1991, LB 344, § 75.
53-145.	Transferred to section 53-160.02.
53-146.	Transferred to section 53-116.01.
53-147.	Transferred to section 53-134.03.
53-148.	Licenses; display.
53-148.01.	Retail or bottle club licensee; warning sign; commission; duties.
53-149.	Licenses; term; sale of premises; temporary operating permit; false information; penalty; license not assignable or inheritable; exception; effect of death or bankruptcy of licensee.
53-150.	Transferred to section 53-135.02.

(e) BONDED WAREHOUSES

53-151.	Repealed. Laws 1991, LB 344, § 75.
53-152.	Repealed. Laws 1991, LB 344, § 75.
53-153.	Repealed. Laws 1991, LB 344, § 75.
53-154.	Repealed. Laws 1991, LB 344, § 75.
53-155.	Repealed. Laws 1991, LB 344, § 75.
53-156.	Repealed. Laws 1991, LB 344, § 75.
53-157.	Transferred to section 53-164.02.
53-158.	Repealed. Laws 1991, LB 344, § 75.
53-159.	Transferred to section 53-130.01.

(f) TAX

53-160.	Tax on manufacturer and wholesaler; amount; exemption; duties of commission.
53-160.01.	Tax on manufacturer and wholesaler; instrumentality of armed forces of United States; resale; exemption.
53-160.02.	Near beer; regulation.
53-160.03.	Beer-related crop; tax credit; calculation; application; contents; approval; notice.
53-160.04.	Ready-to-drink cocktails; tax on manufacturer or wholesaler; amount; exemption; duties of commission.
53-160.05.	Repealed. Laws 1981, LB 497, § 1.
53-160.06.	Repealed. Laws 1981, LB 497, § 1.
53-160.07.	Repealed. Laws 1981, LB 497, § 1.
53-160.08.	Transferred to section 53-178.01.
53-160.09.	Repealed. Laws 1989, LB 1, § 1.
53-161.	Beer; credit for tax paid; when allowed.
53-162.	Alcoholic liquor shipped from another state; tax imposed.
53-162.01.	Repealed. Laws 1963, c. 311, § 7.
53-163.	Commission; rounding of amounts on returns or reports; authorized.
53-164.	Repealed. Laws 1963, c. 311, § 7.

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- 53-164.01. Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.
- 53-164.02. Evasion of liquor tax; acts forbidden; violations; penalty.

(g) MANUFACTURER'S AND WHOLESALE'S RECORD AND REPORT

- 53-165. Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.
- 53-166. Repealed. Laws 1991, LB 344, § 75.
- 53-166.01. Unconstitutional.
- 53-166.02. Unconstitutional.
- 53-166.03. Unconstitutional.
- 53-166.04. Unconstitutional.
- 53-166.05. Unconstitutional.
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- 53-166.11. Unconstitutional.
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- 53-166.15. Unconstitutional.
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- 53-166.17. Unconstitutional.

(h) KEG SALES

- 53-167. Repealed. Laws 1977, LB 176, § 2.
- 53-167.01. Legislative findings.
- 53-167.02. Keg sales; requirements; keg identification number; violation; penalty.
- 53-167.03. Keg identification number; prohibited acts; violation; penalty; deposit.
- 53-167.04. Repealed. Laws 2006, LB 562, § 8.

(i) PROHIBITED ACTS

- 53-168. Receiving money, credit, discounts, rebates, or other inducement; unlawful acts; penalty; private or generic label permitted.
- 53-168.01. Repealed. Laws 1991, LB 344, § 75.
- 53-168.02. Repealed. Laws 1985, LB 183, § 7.
- 53-168.03. Repealed. Laws 1985, LB 183, § 7.
- 53-168.04. Repealed. Laws 1985, LB 183, § 7.
- 53-168.05. Violations; procedure.
- 53-168.06. General prohibition; exceptions.
- 53-169. Manufacturer or wholesaler; craft brewery, manufacturer, or microdistillery licensee; limitations.
- 53-169.01. Manufacturer; interest in licensed wholesaler; prohibitions; exception.
- 53-170. Violations; effect.
- 53-170.01. Repealed. Laws 1991, LB 344, § 75.
- 53-170.02. Repealed. Laws 1991, LB 344, § 75.
- 53-170.03. Repealed. Laws 1991, LB 344, § 75.
- 53-170.04. Repealed. Laws 1991, LB 344, § 75.
- 53-171. Licenses; issuance of more than one kind to same person; when unlawful; craft brewery, manufacturer, or microdistillery licensee; limitations.
- 53-172. Original packages; labels; seals; requirements.
- 53-173. Powdered alcohol; prohibited acts; penalties; effect on license.
- 53-174. Repealed. Laws 2010, LB 861, § 85.
- 53-175. Liquor; acquisition from other than licensed dealer; when unlawful.
- 53-176. Sale or delivery to unauthorized person forbidden; suspension, cancellation, or revocation of license.
- 53-177. Sale at retail; bottle club license; restrictions as to locality.

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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.
53-178. Sale at retail; forbidden in dwelling or lodging house; exceptions.
53-178.01. Licensee; sale to person within motor vehicle; prohibited; exceptions.
53-179. Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.
53-180. Prohibited acts relating to minors and incompetents.
53-180.01. Minor misrepresenting age; unlawful.
53-180.02. Minor; prohibited acts; exception; governing bodies; powers.
53-180.03. Minor; sale or gift to; misrepresenting age; parent or guardian; duties.
53-180.04. Minors; warning notice; posting.
53-180.05. Prohibited acts relating to minors and incompetents; violations; penalties; possible alcohol overdose; actions authorized; false identification; penalty; law enforcement agency; duties.
53-180.06. Documentary proof of age; separate book; record; contents.
53-180.07. Minors; licensee charged with sale; defenses.
53-181. Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles; possible alcohol overdose; actions authorized.
53-182. Repealed. Laws 1977, LB 93, § 1.
53-183. Sale on credit or for goods or services forbidden; exceptions.
53-184. Sale only in original package; refilling forbidden; exception.
53-185. Contract to sell for only one manufacturer or wholesaler; void.
53-186. Consumption of liquor on public property; forbidden; exceptions; license authorized.
53-186.01. Consumption of liquor in public places; license required; exceptions; violations; penalty.
53-187. Nonbeverage licensee forbidden to give or sell alcoholic liquor; violation; penalty.
53-188. Repealed. Laws 2014, LB 863, § 31.
53-189. Repealed. Laws 2014, LB 863, § 31.
53-190. Premises violating law declared common nuisances.
53-191. Repealed. Laws 2014, LB 863, § 31.
53-192. Transportation of liquor into state forbidden; when.
53-192.01. Wholesale licensee; purchases and imports; restrictions.
53-193. Repealed. Laws 1991, LB 344, § 75.
53-194. Repealed. Laws 1991, LB 344, § 75.
53-194.01. Repealed. Laws 1983, LB 213, § 21.
53-194.02. Repealed. Laws 1983, LB 213, § 21.
53-194.03. Transportation of liquor into state; forbidden; when; penalty.
53-194.04. Sale of confections or candy; license requirements; label.
53-195. Repealed. Laws 1991, LB 344, § 75.
53-196. Repealed. Laws 1978, LB 593, § 5.
53-197. Violations; peace officer; duties; neglect of duty; penalty.
53-198. Places operated in violation of act; declared common nuisances; violations; penalty.
53-199. Nuisance; abatement; procedure; owner or lessee may give bond.

(j) PENALTIES

- 53-1,100. Violations; general penalties.
53-1,101. Owner of premises or agent knowing of violations; penalty.
53-1,102. Violations by agent or employee of licensee; deemed act of licensee, when.
53-1,103. False branding; penalty.
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(k) PROSECUTION AND ENFORCEMENT

- 53-1,105. Sufficiency of charge of violation; sufficiency of proof.

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- 53-1,106. Charge of violation; sufficiency of allegations; second offense; proof; former conviction.
- 53-1,107. Complaint, indictment, or information; contents; sufficiency.
- 53-1,108. Search warrants issued on complaint; form.
- 53-1,109. Search warrants; contents; directed to peace officer.
- 53-1,110. Arrest of persons found violating act.
- 53-1,111. Search warrants; search and seizure of property; sale; disposition of proceeds; arrests.
- 53-1,112. Search warrant; return; form and contents.
- 53-1,113. Search warrant; sale of property seized; procedure; destruction, when required.
- 53-1,114. Transferred to section 53-134.04.
- 53-1,115. Proceedings before commission; service upon parties; rehearings; costs.
- 53-1,116. Appeal; procedure.
- 53-1,117. Repealed. Laws 1991, LB 344, § 75.
- 53-1,118. Transferred to section 53-101.05.
- 53-1,119. Local law, ordinance, resolution, or rule; penalty for drinking or intoxication; prohibited.
- 53-1,120. Alcohol-related offenses; law, ordinance, resolution, or rule; effect.
- 53-1,120.01. County resolution or city ordinance prohibiting smoking; not applicable to cigar shops.
- 53-1,121. Law enforcement officer; intoxicated person; removal; civil protective custody; procedure; Department of Health and Human Services; limit on licensure actions.
- 53-1,122. Compliance checks; participation by minors; when.

(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; Laws 2021, LB274, § 1.
 Operative date May 26, 2021.

The Nebraska Liquor Control Act empowers the Nebraska Liquor Control Commission to include conditions on a liquor license if those restrictions are consistent with the purpose of the act and are reasonably necessary to the protection of the health, safety, and welfare of the people of the State of Nebraska and to the promotion and fostering of temperance in the con-

sumption of alcohol. *Abay, L.L.C. v. Nebraska Liquor Control Comm.*, 303 Neb. 214, 927 N.W.2d 780 (2019).

Liquor Control Act provides comprehensive authority and procedure relating to the granting, renewing, or revoking of liquor licenses without recourse to courts. *Leeman v. Vocelka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

53-101.01 Statement of policy.

It is declared to be the policy of the Legislature to (1) regulate the transportation or importation of alcoholic liquor into this state when such alcoholic liquor is intended for delivery or use within the state, (2) promote adequate, economi-

cal, and efficient service by licensees selling alcoholic liquor within the State of Nebraska without unjust or undue discrimination, preference, or advantage, (3) generate revenue by imposing an excise tax upon alcoholic liquor, and (4) promote the health, safety, and welfare of the people of the state and encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the manufacture, distribution, and sale of alcoholic liquor.

Source: Laws 1981, LB 124, § 1; Laws 1989, LB 781, § 2; Laws 1991, LB 344, § 3; Laws 1993, LB 183, § 2; Laws 1999, LB 267, § 1.

53-101.02 Farm wineries; legislative intent.

It is the intent of the Legislature to encourage the production, use in manufacturing, and consumption of agricultural products grown within the state by providing for the existence of farm winery operations. The Legislature recognizes that the creation of farm wineries will stimulate the creation of jobs and investments in small communities, encourage the use of lands upon which grapes and other wine-related crops may be grown, and provide tax revenue which would not otherwise be realized.

Source: Laws 1985, LB 279, § 1; Laws 2003, LB 536, § 1.

53-101.03 Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.

53-101.04 Transferred to section 53-148.01.

53-101.05 Act to be liberally construed.

The Nebraska Liquor Control Act shall be liberally construed to the end that the health, safety, and welfare of the people of the State of Nebraska are protected and temperance in the consumption of alcoholic liquor is fostered and promoted by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 97, p. 427; C.S.Supp.,1941, § 53-397; R.S.1943, § 53-1,118; R.S.1943, (1988), § 53-1,118; Laws 1991, LB 344, § 4.

To comply with legislative policy licensee or agent of corporate licensee must be satisfactory to and approved by the commission with respect to his character. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49 (1973).

It is not the court's duty to read a meaning into a statute not warranted by legislative language. *Calvary Baptist Church v. Coonrad*, 163 Neb. 25, 77 N.W.2d 821 (1956).

Liquor Control Act is to be liberally construed. *Allen v. Tobin*, 155 Neb. 212, 51 N.W.2d 338 (1952).

Text of Liquor Control Act evidences legislative interest to authorize adoption of regulations by commission. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

53-102 Transferred to section 53-168.06.

53-103 Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.49 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; Laws 2021, LB274, § 2.

Operative date May 26, 2021.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The change in definition of minor did not relieve from penalty one who was twenty years of age at time of commission of offense but was not sentenced until after the definition was changed. *State v. Duitsman*, 186 Neb. 39, 180 N.W.2d 685 (1970).

Amendment to this section, made by Chapter 5, Seventy-fourth Extraordinary Session of the Legislature, 1963, was unconstitutional because not within the Governor's call. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

Although organized as private club, evidence established that it was operated as private business of an individual. *State ex rel. Fitzgerald v. Kubik*, 167 Neb. 219, 92 N.W.2d 533 (1958).

Definition of term alcoholic liquors includes beer. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Plaintiff did not come within statutory definition of club. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

The Liquor Control Act provides for the issuance by Liquor Control Commission of a license to sell alcoholic liquors which are defined by the act to include alcohol, spirits, wine and beer. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1974).

53-103.01 Alcohol, defined.

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol.

Source: Laws 2010, LB861, § 9.

53-103.02 Alcoholic liquor, defined.

(1) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy that contains more than one-half of one percent alcohol.

(2) The Nebraska Liquor Control Act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes.

Source: Laws 2010, LB861, § 10.

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.

53-103.04 Brand, defined.

Brand means alcoholic liquor identified as the product of a specific manufacturer.

Source: Laws 2010, LB861, § 12.

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.

53-103.06 Campus, defined.

Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets and, as it pertains to the western boundary of the main campus of the University of Nebraska-Lincoln, means the east right-of-way line of 10th Street from R Street to Holdrege Street (Salt Creek Roadway).

Source: Laws 2010, LB861, § 14.

53-103.07 Cancel, defined.

Cancel means to discontinue all rights and privileges of a license.

Source: Laws 2010, LB861, § 15.

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.

53-103.10 Commission, defined.

Commission means the Nebraska Liquor Control Commission.

Source: Laws 2010, LB861, § 18.

53-103.11 Consume, defined.

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

Source: Laws 2010, LB861, § 19.

53-103.12 Craft brewery, defined.

Craft brewery means a brewpub or a microbrewery.

Source: Laws 2010, LB861, § 20.

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.

53-103.14 Franchise or agreement, defined.

Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following:

(1) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing;

(2) A relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer;

(3) A relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system;

(4) A relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and

(5) A relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer.

Source: Laws 2010, LB861, § 22.

53-103.15 Generic label, defined.

Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law.

Source: Laws 2010, LB861, § 23.

53-103.16 Hotel, defined.

Hotel means any building or other structure (1) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (2) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (3) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity.

Source: Laws 2010, LB861, § 24.

53-103.17 Local governing body, defined.

Local governing body means (1) the city council or village board of trustees of a city or village within which the licensed premises are located or (2) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located.

Source: Laws 2010, LB861, § 25.

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.

53-103.19 Manufacture, defined.

Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the Nebraska Liquor Control Act to serve drinks for consumption on the premises where sold.

Source: Laws 2010, LB861, § 27.

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.

53-103.22 Microdistillery, defined.

Microdistillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces one hundred thousand or fewer gallons of liquor annually.

Source: Laws 2010, LB861, § 30; Laws 2021, LB274, § 5.
Operative date May 26, 2021.

53-103.23 Minor, defined.

Minor means any person, male or female, under twenty-one years of age, regardless of marital status.

Source: Laws 2010, LB861, § 31.

53-103.24 Near beer, defined.

Near beer means beer containing less than one-half of one percent of alcohol by volume.

Source: Laws 2010, LB861, § 32.

53-103.25 Nonbeverage user, defined.

Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes.

Source: Laws 2010, LB861, § 33.

53-103.26 Nonprofit corporation, defined.

Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes.

Source: Laws 2010, LB861, § 34.

53-103.27 Original package, defined.

Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor.

Source: Laws 2010, LB861, § 35.

53-103.28 Person, defined.

Person means any natural person, trustee, corporation, partnership, or limited liability company.

Source: Laws 2010, LB861, § 36.

53-103.29 Private label, defined.

Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law.

Source: Laws 2010, LB861, § 37.

53-103.30 Restaurant, defined.

Restaurant means any public place (1) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (2) which has no sleeping accommodations, and (3) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests.

Source: Laws 2010, LB861, § 38.

53-103.31 Retailer, defined.

Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175.

Source: Laws 2010, LB861, § 39.

53-103.32 Revoke, defined.

Revoke means to permanently void and recall all rights and privileges of a license.

Source: Laws 2010, LB861, § 40.

53-103.33 Sale, defined.

Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee.

Source: Laws 2010, LB861, § 41.

53-103.34 Sampling, defined.

Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period.

Source: Laws 2010, LB861, § 42.

53-103.35 Sell, defined.

Sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

Source: Laws 2010, LB861, § 43.

53-103.36 Sell at retail and sale at retail, defined.

Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175.

Source: Laws 2010, LB861, § 44.

53-103.37 Shipping license, defined.

Shipping license means a license granted pursuant to section 53-123.15.

Source: Laws 2010, LB861, § 45.

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.

53-103.39 Suspend, defined.

Suspend means to cause a temporary interruption of all rights and privileges of a license.

Source: Laws 2010, LB861, § 47.

53-103.40 Territory or sales territory, defined.

Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer.

Source: Laws 2010, LB861, § 48.

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.

53-103.42 Wine, defined.

Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

Source: Laws 2010, LB861, § 50.

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.

53-103.48 Farmers market, defined.

Farmers market means any common facility or area where producers or growers gather on a regular, recurring basis to sell fruits, vegetables, meats, and other farm products directly to consumers.

Source: Laws 2021, LB274, § 3.
Operative date May 26, 2021.

53-103.49 Ready-to-drink cocktail, defined.

Ready-to-drink cocktail means a beverage or confection containing spirits in an original package which contains twelve and one-half percent or less alcohol by volume.

Source: Laws 2021, LB274, § 4.
Operative date May 26, 2021.

53-104 Repealed. Laws 1991, LB 344, § 75.

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

53-105 Nebraska Liquor Control Commission; creation; members; appointment; qualifications.

There is hereby created the Nebraska Liquor Control Commission, consisting of three members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature, no more than two of whom shall be members of the same political party, and no two shall be citizens of the same congressional district.

Source: Laws 1935, c. 116, § 6, p. 379; C.S.Supp.,1941, § 53-306; R.S. 1943, § 53-105; Laws 1965, c. 318, § 3, p. 890.

Under former act, it did not provide for, or require, confirmation by the Legislature. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-106 Commission; members; term; removal; not to hold other office.

The Governor shall appoint three members of the commission, one of whom he shall designate as chairman. One member shall be appointed every two years and shall hold office for a period of six years. Any appointee may be removed by the Governor, after an opportunity to be heard, for malfeasance, misfeasance or neglect in office. No person shall be appointed to the commission, or continue to hold that office after appointment, while holding any other office or position under the laws of this state, any other state, or of the United States.

Source: Laws 1935, c. 116, § 7, p. 379; C.S.Supp.,1941, § 53-307; R.S. 1943, § 53-106.

Term of office of member of Liquor Control Commission is six years. State ex rel. Meyer v. Sorrell, 174 Neb. 340, 117 N.W.2d 872 (1962).

Authority to remove member of Liquor Control Commission is declaratory of power granted by the Constitution. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

Member of Liquor Control Commission can only be removed by the Governor for cause, after an opportunity to be heard, and for the reasons set forth in this section. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-107 Commission; quorum; executive director; duties.

A majority of the commission shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission. Every act of a majority of the

members of the commission shall be deemed to be the act of the commission. The commission shall have an executive director, to be appointed by it subject to the approval of the Governor, who shall keep a record of all proceedings, transactions, communications, and official acts of the commission. The executive director shall be the custodian of all records and perform such other duties as the commission may prescribe.

Source: Laws 1935, c. 116, § 8, p. 380; C.S.Supp.,1941, § 53-308; R.S. 1943, § 53-107; Laws 1989, LB 780, § 1.

Appointment of secretary is subject to approval of Governor. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-108 Employees; appointment.

The commission may, with the advice and approval of the Governor, appoint or employ such clerks and other employees as may be necessary to carry out the Nebraska Liquor Control Act or to perform the duties and exercise the powers conferred by law upon the commission.

Source: Laws 1935, c. 116, § 9, p. 380; C.S.Supp.,1941, § 53-309; R.S. 1943, § 53-108; Laws 1945, c. 238, § 22, p. 714; Laws 1951, c. 311, § 4, p. 1067; Laws 1991, LB 344, § 6.

Employment of subordinate employees is subject to approval of Governor. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-109 Commissioners and employees; bonds or insurance.

Before entering upon the duties of his or her office, each commissioner shall be bonded or insured as required by section 11-201. Employees of the commission who are accountable for public funds shall be bonded or insured as required by section 11-201 to secure the safety of such funds. The premium shall be paid by the State of Nebraska out of the General Fund. Before entering upon the duties of his or her office, the executive director of the commission shall be bonded or insured as required by section 11-201.

Source: Laws 1935, c. 116, § 10, p. 380; C.S.Supp.,1941, § 53-310; R.S.1943, § 53-109; Laws 1953, c. 180, § 1, p. 569; Laws 1978, LB 653, § 14; Laws 1989, LB 780, § 2; Laws 2004, LB 884, § 25.

Bond required of member of Liquor Control Commission is different than that required of head of executive department. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-110 Commissioners and employees; qualifications; employment by license 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.

53-111 Gifts and gratuities forbidden; violation; penalty.

A commissioner, the executive director of the commission, or any person appointed or employed by the commission shall not solicit or accept any gift, gratuity, emolument, or employment from any person subject to the Nebraska Liquor Control Act or from any officer, agent, or employee thereof or solicit, request from, or recommend, directly or indirectly, to any such person or to any officer, agent, or employee thereof the appointment of any person to any place or position. Any such person and every officer, agent, or employee thereof may not offer to any commissioner, the executive director, or any person appointed or employed by the commission any gift, gratuity, emolument, or employment. If a commissioner, the executive director, or any person appointed or employed by the commission violates this section, he or she shall be removed from his or her office or employment. Every person violating this section shall be guilty of a Class II misdemeanor.

Source: Laws 1935, c. 116, § 12, p. 381; C.S.Supp.,1941, § 53-312; R.S.1943, § 53-111; Laws 1977, LB 40, § 310; Laws 1989, LB 780, § 4.

A violation of this section affords an adequate basis for an order of removal from office. State ex rel. Meyer v. Sorrell, 174 Neb. 340, 117 N.W.2d 872 (1962).

Violation of this section constitutes ground for removal of member of Liquor Control Commission. State ex rel. Beck v. Young, 154 Neb. 588, 48 N.W.2d 677 (1951).

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.

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-112.01 Repealed. Laws 1957, c. 227, § 3.

53-112.02 Repealed. Laws 1959, c. 266, § 1.

53-112.03 Repealed. Laws 1989, LB 1, § 1.

53-112.04 Repealed. Laws 1989, LB 1, § 1.

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.

53-114 Meetings; office; branch offices; seal; certified copies of records as evidence.

The office of the commission shall be in Lincoln, but the commission may, with the approval of the Governor, establish and maintain branch offices at places other than the seat of government. The commission shall hold regular meetings at least once a month and may hold such special meetings as it deems necessary at any time and at any place within the state. The commission may, for authentication of its records, process, and proceedings, adopt, keep, and use a common seal, of which seal judicial notice shall be taken in all of the courts of the state. Any process, notice, or other paper which the commission is authorized by law to issue shall be deemed sufficient if signed by the chairperson and executive director of the commission and authenticated by such seal. All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the commission and all reports and documents filed with the commission may be proved in any court of this state by copy thereof certified to by the executive director attached.

Source: Laws 1935, c. 116, § 15, p. 382; C.S.Supp.,1941, § 53-315; R.S.1943, § 53-114; Laws 1988, LB 1089, § 4; Laws 1989, LB 780, § 7.

Member of Liquor Control Commission is not required to reside in Lincoln. State ex rel. Johnson v. Chase, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-115 Assistant attorney general assigned to commission; compensation; payment.

The Attorney General of Nebraska shall designate an assistant attorney general or assistant attorneys general, when requested by the commission and directed by the Governor, and the services of such assistant attorney general or assistant attorneys general shall be available to the commission whenever demanded. The compensation of such assistant attorney general or assistant attorneys general as are assigned to the commission shall be paid by the office of the Attorney General.

Source: Laws 1935, c. 116, § 24, p. 389; C.S.Supp.,1941, § 53-324; R.S.1943, § 53-115; Laws 1988, LB 1089, § 5.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-116 Power to regulate and control alcoholic liquor.

The power to regulate all phases of the control of the manufacture, distribution, sale, and traffic of alcoholic liquor, except as specifically delegated in the Nebraska Liquor Control Act, is vested exclusively in the commission.

Source: Laws 1935, c. 116, § 4, p. 378; C.S.Supp.,1941, § 53-304; R.S. 1943, § 53-116; Laws 1989, LB 781, § 3; Laws 1993, LB 183, § 3; Laws 1999, LB 267, § 3.

1. Commission, powers and duties
2. Local controls
3. Miscellaneous

1. Commission, powers and duties

Nowhere in the statutes relating to the liquor laws is there any requirement that an applicant show need before obtaining a license and the Nebraska Liquor Control Commission cannot do so by rule; therefore, rules 2 and 13, which require such a showing, are invalid. *Bond v. Nebraska Liquor Control Comm.*, 210 Neb. 663, 316 N.W.2d 600 (1982).

The power to regulate liquor business, except as specifically delegated in Chapter 53, R.R.S.1943, is vested exclusively in the Nebraska Liquor Control Commission. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

Nebraska Liquor Control Commission has power to regulate distribution and sale of alcoholic liquors. *T & N P Co., Inc. v. Nebraska Liquor Control Commission*, 189 Neb. 708, 204 N.W.2d 809 (1973).

Power to regulate all phases of control of manufacture, distribution, sale and traffic in intoxicating liquors is vested exclusively in the Liquor Control Commission. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

The Liquor Control Commission has the power to regulate all phases of the control of manufacture, distribution, sale, and traffic in intoxicating liquors. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

Liquor Control Commission has power to regulate liquor traffic except as such power is specifically delegated elsewhere. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

The Nebraska Liquor Control Commission is empowered to determine, by reasonable regulations, the hours for sale of beer outside the corporate limits of cities and villages, regardless of its alcoholic content. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

The Nebraska Liquor Control Act empowers the Nebraska Liquor Control Commission to issue a license subject to certain restrictions and conditions, including barring a person with a past history of problems controlling the patrons and the establishment, as long as those conditions or restrictions are reasonably necessary to protect the health, safety, and welfare of the people of the State of Nebraska and to promote and foster temperance in the consumption of alcohol. *F & T, Inc. v. Nebraska Liquor Control Comm.*, 7 Neb. App. 973, 587 N.W.2d 700 (1998).

2. Local controls

A city is not prohibited from adopting reasonable regulations beyond those of the Liquor Control Commission if not in conflict therewith. *Bali Hai', Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

Ordinance of city in conflict with Liquor Control Act was unenforceable. *State v. Kubik*, 159 Neb. 509, 67 N.W.2d 755 (1954).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1974).

3. Miscellaneous

Where applicant for license not afforded opportunity to explore an issue material to the license, court should direct a new hearing. *72nd Street Pizza, Inc. v. Nebraska Liquor Control Commission*, 199 Neb. 729, 261 N.W.2d 614 (1978).

Where licensee stored alcoholic beverages in an unauthorized area without permission of the commission and permitted part of licensed premises to be used for gambling, suspension of license was authorized and reasonable. *O'Connor v. Nebraska Liquor Control Commission*, 191 Neb. 436, 215 N.W.2d 635 (1974).

Rule of Liquor Control Commission prescribing price at which liquors should be sold at retail was unconstitutional. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

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.

The authority of the Nebraska Liquor Control Commission to cancel a liquor license is set forth in this section and section 53-117.08. Each of these sections gives the commission authority to revoke, cancel, or suspend a liquor license where, after a proper hearing, the licensee has been found to have violated a

provision of the Nebraska Liquor Control Act, a regulation adopted pursuant to the act, or a lawful ordinance of a local governing body. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

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.

In the absence of a violation of a statute or valid regulation of the Nebraska Liquor Control Commission, the commission has no authority to cancel a liquor license. *Jetter v. Nebraska Liquor Control Commission*, 204 Neb. 431, 283 N.W.2d 5 (1979).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive depart-

ments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Funds collected as state license fees are properly distributed for use of all school districts within state and should not be paid over to counties in which liquor licenses are granted. *School District of Omaha v. Gass*, 131 Neb. 312, 267 N.W. 528 (1936).

53-117.01 Subpoenas; issuance; witnesses; documents.

In the discharge of any duty herein imposed the commission shall have authority to issue subpoenas and to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony.

Source: Laws 1959, c. 245, § 2, p. 844.

53-117.02 Disobedience to subpoena; refusal to testify; proceedings for contempt.

In case of disobedience on the part of any person to any subpoena issued by the commission or the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court for the county in which such hearing was convened, on the application of a member of the commission, to compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

Source: Laws 1959, c. 245, § 3, p. 844.

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.

53-117.04 Repealed. Laws 1989, LB 70, § 5; Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.

53-117.05 Rules and regulations; statutes; commission; provide copies; fee authorized.

The commission shall provide without charge to any person licensed under the Nebraska Liquor Control Act a set of rules and regulations adopted and promulgated by the commission, a copy of the Nebraska Liquor Control Act, and any other information which the commission deems important in the area of liquor control in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the commission may determine to be appropriate. The commission may update such material as often as it deems necessary. The commission may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Source: Laws 1989, LB 70, § 3; Laws 1989, LB 781, § 17; Laws 1991, LB 202, § 1; Laws 1993, LB 183, § 6.

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.

53-117.08 License; suspend, cancel, or revoke; hearing; conviction; court; duty.

The license of any licensee who violates any of the provisions of the Nebraska Liquor Control Act shall be suspended, canceled, or revoked. If any licensee violates the regulations adopted and promulgated by the commission or any lawful ordinance of the local governing body, the commission may, after proper hearing, suspend, cancel, or revoke the license. If any licensee is convicted of a violation of the terms of the act, the court shall immediately notify the local governing body and the commission.

Source: Laws 1991, LB 344, § 13.

The authority of the Nebraska Liquor Control Commission to cancel a liquor license is set forth in section 53-116.01 and this section. Each of these sections gives the commission authority to revoke, cancel, or suspend a liquor license where, after a proper hearing, the licensee has been found to have violated a

provision of the Nebraska Liquor Control Act, a regulation adopted pursuant to the act, or a lawful ordinance of a local governing body. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

53-118 Rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out the Nebraska Liquor Control Act. The rules and regulations shall include, among such other things as the commission may determine, provisions: (1) Prescribing conditions as to the issuance of duplicate licenses in lieu of those lost or destroyed; (2) determining for which violations of the rules and regulations licenses shall be suspended, canceled, or revoked; (3) establishing standards of purity, sanitation, honest advertising, and representation; and (4) covering any and all the other details which are necessary or convenient to the enforcement of the intent, purpose, and requirements of the act.

Source: Laws 1935, c. 116, § 16, p. 383; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-118; Laws 1945, c. 127, § 1, p. 409; Laws 1955, c. 201, § 1, p. 569; Laws 1961, c. 259, § 1, p. 767; Laws 1963, c. 311, § 1, p. 936; Laws 1967, c. 331, § 1, p. 877; Laws 1967, c. 332, § 2, p. 880; Laws 1971, LB 754, § 1; Laws 1972, LB 66, § 1; Laws 1977, LB 362, § 1; Laws 1979, LB 323, § 1; Laws 1991, LB 344, § 14.

In the absence of a violation of a statute or valid regulation of the Nebraska Liquor Control Commission, the commission has no authority to cancel a liquor license. *Jetter v. Nebraska Liquor Control Commission*, 204 Neb. 431, 283 N.W.2d 5 (1979).

A city is not prohibited from adopting reasonable regulations beyond those of the Liquor Control Commission if not in conflict therewith. *Bali Hai', Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

Rule of Liquor Control Commission prescribing price at which liquors should be sold at retail was unconstitutional.

Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

Liquor Control Commission may promulgate such reasonable rules and regulations as it may deem necessary to carry out Liquor Control Act, but such rules and regulations must not be in conflict with the act itself. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

Legislative grant of power to Nebraska Liquor Control Commission to make rules and regulations with respect to all containers of alcoholic liquors is constitutional. *Marsh & Marsh, Inc. v. Carmichael*, 136 Neb. 797, 287 N.W. 616 (1939).

53-119 Repealed. Laws 1991, LB 344, § 75.**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.

53-120 Ready-to-drink cocktails; production and sale; rules and regulations.

The commission may adopt and promulgate rules and regulations pertaining to the production and sale of ready-to-drink cocktails.

Source: Laws 2021, LB274, § 7.
Operative date May 26, 2021.

(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.

Percentage of votes required is based on last general municipal election. *Allen v. Tobin*, 155 Neb. 212, 51 N.W.2d 338 (1952).

over to counties in which liquor licenses are granted. *School District of Omaha v. Gass*, 131 Neb. 312, 267 N.W. 528 (1936).

Funds collected as state license fees are properly distributed for use of all school districts within state and should not be paid

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; (18) special party bus license; and (19) promotional farmers market special designated 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; Laws 2021, LB274, § 8.
Operative date May 26, 2021.

A nonprofit corporation license is a retail license for the sale of alcoholic liquors including beer. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

to sell beer and other liquor in same room, notwithstanding another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

Where statute authorizes granting licensees right to sell all forms of alcoholic liquors including beer, licensees are entitled

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.

53-123.02 Alcoholic liquor wholesale license, except beer; rights of licensee; sampling.

An alcoholic liquor wholesale license, except beer, shall (1) allow the wholesale purchase, importation, and storage of alcoholic liquor and sale of alcoholic liquor, except beer, to licensees in this state and to persons outside the state as may be permitted by law and (2) allow the sampling of tax-paid alcoholic liquor, except beer, upon the premises of the licensed wholesaler by a licensed retailer or allow sampling on the premises of any licensed retailer, whether the license permits consumption on or off the licensed premises, or both, in the manner prescribed by the commission. The sampling authorized under this section shall be limited to persons licensed as wholesalers or retailers and their employees.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(2), p. 617; Laws 1947, c. 188, § 1(2), p. 621; Laws 1963, c. 310, § 4, p. 926; Laws 1980, LB 848, § 3; Laws 1982, LB 431, § 2; Laws 1991, LB 344, § 18; Laws 1993, LB 53, § 1; Laws 2003, LB 205, § 1; Laws 2004, LB 485, § 10.

53-123.03 Beer wholesale license; rights of licensee; designated territory.

A beer wholesale license shall (1) allow the wholesale purchase, importation, and storage of beer and sale, including delivery, of the brand or brands

described in such license to licensees in this state in the sales territory prescribed in the license for each brand and to such persons outside the state as may be permitted by law, (2) allow the licensed wholesaler to do all things incident to the carrying on of the wholesale beer business, including the sampling of tax-paid beer upon the premises of the licensed wholesaler by a licensed retailer in the manner prescribed by the commission, and (3) allow the sampling of tax-paid beer upon the premises of any retailer, whether the license permits consumption on or off the licensed premises, or both, in a manner prescribed by the commission.

The sampling authorized under subdivision (3) of this section shall be limited to persons licensed as wholesalers or retailers and their employees.

The license shall designate the territory within which the licensed wholesaler may sell the designated product of any brewer as agreed upon by the licensee and the brewer.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(3), p. 617; Laws 1947, c. 188, § 1(3), p. 622; Laws 1963, c. 310, § 5, p. 926; Laws 1971, LB 234, § 18; Laws 1976, LB 204, § 1; Laws 1980, LB 848, § 4; Laws 1983, LB 133, § 1; Laws 1991, LB 344, § 19; Laws 2003, LB 205, § 2; Laws 2004, LB 485, § 11.

53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions; sales for consumption off the premises; conditions; notice to commission, required.

(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.

(4) The holder of a Class C liquor license as described in subdivision (6)(a)(iii) of section 53-124 may sell alcoholic liquor not in the original package, such as a mixed drink or cocktail, to a person twenty-one years of age or older for consumption off the premises if (a) the alcoholic liquor is (i) not partially consumed and (ii) in a labeled and sealed container with a tamper-evident lid, cap, or seal, as approved by the commission, and (b) for alcoholic liquor transported in a motor vehicle, the alcoholic liquor is 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.

(5) The holder of a Class I liquor license as described in subdivision (6)(a)(v) of section 53-124 may sell alcoholic liquor not in the original package, such as a mixed drink or cocktail, to a person twenty-one years of age or older for consumption off the premises if (a) the alcoholic liquor is (i) not partially consumed, (ii) in a labeled and sealed container with a tamper-evident lid, cap, or seal, as approved by the commission, and (iii) purchased along with food, and (b) for alcoholic liquor transported in a motor vehicle, the alcoholic liquor is 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.

(6) A licensee intending to sell alcoholic liquor in the manner authorized under subsections (4) and (5) of this section shall provide notice of such intention to the commission during initial licensure or upon the licensee's annual renewal.

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; Laws 2021, LB274, § 9.

Operative date May 26, 2021.

53-123.05 Railroad or airline license; rights of licensee.

(1) The commission may issue a license to any airline company, dining car company, sleeping car company, or railroad company operating in this state which authorizes the holder thereof to keep for sale and to sell or dispense alcoholic liquor for consumption in its airplanes, dining cars, sleeping cars, buffet cars, observation cars, and any other cars used for transportation or accommodation of passengers. Each such company shall keep a duplicate of such license posted in each car or airplane where such alcoholic liquor is served.

(2) Every such license shall expire on April 30 of each year. Each such license shall be good throughout this state as a state license. Only one such license shall be required for all cars or airplanes 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 selling or dispensing alcoholic liquor for consumption in such cars or airplanes. Nothing in the Nebraska Liquor Control Act shall apply to or affect the right of holders of such licenses to transport within this state or to import into this state alcoholic liquor to be kept for dispensing or sale or to be sold while actually en route in the cars or airplanes of such licensees.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(5), p. 618; Laws 1947, c. 188, § 1(5), p. 622; Laws 1957, c. 229, § 1, p. 786; Laws 1967, c. 332, § 5, p. 882; Laws 1989, LB 780, § 8.

53-123.06 Boat license; rights of licensee.

A boat license shall allow the sale of alcoholic liquor in individual drinks, on any passenger boat which maintains a public dining room or restaurant thereon.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(6), p. 618; Laws 1947, c. 188, § 1(6), p. 623.

53-123.07 Nonbeverage user’s license; rights of licensee; importation of alcohol; classes of license.

A nonbeverage user’s license shall allow the licensee to purchase alcoholic liquor from a licensed manufacturer or wholesaler without the imposition of any tax upon the business of such licensed manufacturer or wholesaler as to such alcoholic liquor to be used by such licensed nonbeverage user solely for the nonbeverage purposes set forth in subsection (4) of section 53-160. If any licensed nonbeverage user is engaged in the business of manufacturing, compounding, or preparing pharmaceutical products or similar preparations or products containing alcohol to be sold in both intrastate and interstate commerce, such nonbeverage user’s license shall allow the licensee to purchase at wholesale or otherwise from manufacturers or wholesalers not licensed in the state and to import alcohol either in barrels, drums, casks, or other containers. If any licensed nonbeverage user is engaged in the business of manufacturing or preparing food products containing alcoholic liquor to be sold in both intrastate and interstate commerce, such nonbeverage user’s license shall allow the licensee to purchase at wholesale from alcoholic liquor wholesalers licensed within the state alcoholic liquor either in barrels, drums, casks, or other containers, and such alcoholic liquor wholesalers may cause such alcoholic liquor to be shipped or delivered directly to such nonbeverage user from the source of supply, in which event all such shipments or deliveries shall be considered as received by such alcoholic liquor wholesalers within this state and at their licensed premises and purchased by such alcoholic liquor wholesalers and for their account, and all such shipments or deliveries shall be recorded and reported by such alcoholic liquor wholesalers as required by section 53-165. All such licenses shall be divided and classified and shall permit the purchase during the term for which such licenses are issued of limited and stated quantities of alcoholic liquor as follows:

- Class 1, not to exceed100 gallons
- Class 2, not to exceed1,000 gallons

- Class 3, not to exceed5,000 gallons
- Class 4, not to exceed10,000 gallons
- Class 5, in excess of10,000 gallons.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(7), p. 618; Laws 1947, c. 188, § 1(7), p. 623; Laws 1965, c. 319, § 2, p. 908; Laws 1971, LB 466, § 1; Laws 1991, LB 344, § 21.

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.

53-123.09 Beer wholesaler; delivery outside territory; unlawful; penalty.

(1) It shall be unlawful for any beer wholesaler to deliver beer to any retail licensee located outside the geographic territory designated on the beer wholesaler's license.

(2) If any person violates subsection (1) of this section, such person's license shall be suspended or revoked by the commission in the manner provided by the Nebraska Liquor Control Act.

Source: Laws 1976, LB 204, § 2; Laws 1991, LB 344, § 22.

53-123.10 Farm winery license; when issued.

A license to operate a farm winery may be issued by the commission upon an applicant's compliance with section 53-123.12 and such other requirements as the commission adopts and promulgates by rule and regulation to administer sections 53-101.02 and 53-123.10 to 53-123.13.

Source: Laws 1985, LB 279, § 4.

53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions; sales for consumption off the premises; conditions; notice to commission, required.

(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;

(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; and

(i) Sell alcoholic liquor authorized under a farm winery license not in its original package, such as sangria or wine slushies, to a person twenty-one years of age or older for consumption off the premises if (i) the alcoholic liquor is (A) not partially consumed and (B) in a labeled and sealed container with a tamper-evident lid, cap, or seal, as approved by the commission, and (ii) for alcoholic liquor transported in a motor vehicle, the alcoholic liquor is 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. A farm winery which sells alcoholic liquor authorized under a farm winery license not in its original package for consumption off the premises shall provide notice to the commission during a farm winery licensee's initial licensure or at the time of the annual renewal of such license regarding such sales.

(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.

(6) A holder of a farm winery license may obtain a promotional farmers market special designated license pursuant to section 53-124.16.

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; Laws 2021, LB274, § 10.

Operative date May 26, 2021.

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 consumption 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.

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, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. 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; Laws 2021, LB274, § 11.

Operative date May 26, 2021.

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 one hundred 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, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. 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; Laws 2021, LB274, § 12.

Operative date May 26, 2021.

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.

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 except as provided in subsection (4) of section 53-123.04. 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 except as provided in subsection (5) of section 53-123.04; 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; Laws 2021, LB274, § 15.

Operative date May 26, 2021.

It was error for the Nebraska Liquor Control Commission to refuse a license on grounds of "unfair competition" when the applicant was not advised ahead of time that that issue would be considered by the commission. A license may not be denied solely on the grounds that it might give one business a "competitive edge" over others in the area. *Halbert v. Nebraska Liquor Control Commission*, 206 Neb. 687, 294 N.W.2d 864 (1980).

There is a difference between nonprofit corporation license and bottle club license. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

Rights of individual licensees to operate are subject to power of Liquor Control Commission. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

Where statute authorizes granting licensees right to sell all forms of alcoholic liquors including beer, licensees are entitled to sell beer and other liquor in same room, notwithstanding another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1974).

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
Reissue 2021	1208

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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:

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.

53-124.02 Holder of license under prior law; how treated.

On May 1, 2005, the holder of a Class D-1 license, Class E license, or Class K license shall be issued a Class D license, the holder of a Class F license shall be issued a Class A license, and the holder of a Class H license, Class J license, or bottle club license shall be issued a Class I license. Any conditions placed on a Class D-1, Class E, Class F, Class H, Class J, Class K, or bottle club license by the local governing body or the commission prior to May 1, 2005, shall continue to apply to the license issued to such holder on such date.

Source: Laws 2004, LB 485, § 16.

53-124.03 Repealed. Laws 1986, LB 871, § 4.

53-124.04 Repealed. Laws 1986, LB 871, § 4.

53-124.05 Repealed. Laws 1986, LB 871, § 4.

53-124.06 Repealed. Laws 1967, c. 333, § 1.

53-124.07 Repealed. Laws 1986, LB 871, § 4.

53-124.08 Repealed. Laws 1983, LB 213, § 21.

53-124.09 Repealed. Laws 1986, LB 871, § 4.

53-124.10 Repealed. Laws 1983, LB 213, § 21.

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, except that the holder of a catering license who also holds a promotional farmers market special designated license under section 53-124.16 may cater a farmers market as prescribed in section 53-124.17.

(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; Laws 2021, LB274, § 16.
Operative date May 26, 2021.

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.

53-124.15 Community college culinary education program; catering license.

A community college which offers a culinary education program may obtain a catering license under this section upon applying for and receiving a Class I license under the Nebraska Liquor Control Act. The catering license shall be issued for the same period and may be renewed in the same manner as the Class I license.

A community college holding a catering license and a Class I license under the act may sell alcoholic beverages only (1) at events held by such culinary education program on the campus of the community college or (2) at events catered by such culinary education program as part of the requirements of such program.

Source: Laws 2009, LB232, § 2.

53-124.16 Promotional farmers market special designated license; issuance; conditions; application; fee; rights of licensee.

(1) The commission may issue a promotional farmers market special designated license to a craft brewery, microdistillery, or farm winery licensee to sell or dispense alcoholic liquor, which the holder is licensed to produce, at a farmers market outside of the manufacturer's designated premises under conditions specified in this section.

(2) A promotional farmers market special designated license issued under this section shall not be used without approval of the local governing body pursuant to section 53-124.17.

(3) The craft brewery, microdistillery, or farm winery licensee seeking a promotional farmers market special designated license under this section 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 the applicant is licensed, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) sufficient evidence that the licensee will carry on the activities and business authorized by the license on behalf of the licensee, and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (d) a statement of the type of activity to be carried on during the time period for which a promotional farmers market special designated license is requested, (e) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the promotional farmers market special designated license, and (f) information on a safety and security

plan for use of the promotional farmers market special designated license as required by the commission.

(4) There shall be a fee of fifteen dollars for a promotional farmers market special designated license payable to the commission and submitted with the application. 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 promotional farmers market special designated license shall be issued for the same period and may be renewed in the same manner as the craft brewery, microdistillery, or farm winery license.

(5) If the applicant meets the requirements of this section, a promotional farmers market special designated license shall be granted and issued by the commission for use by the holder of the promotional farmers market special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail license shall apply to the holder of a promotional farmers market 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 promotional farmers market special designated license, except that the commission may not designate exemption from sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a promotional farmers market special designated license, the application shall be denied by the commission.

(6) A promotional farmers market special designated license issued by the commission shall be mailed or delivered to the licensee. The licensee shall comply with any rules and regulations adopted and promulgated by the commission. Violation of any provision of this section or section 53-124.17 may be cause to revoke, cancel, or suspend the promotional farmers market special designated license or the class of retail license issued under section 53-124 held by such licensee.

Source: Laws 2021, LB274, § 13.
Operative date May 26, 2021.

53-124.17 Promotional farmers market special designated license holder; permit to sell or dispense; application; issuance; conditions; local governing body; duties.

(1) The holder of a promotional farmers market special designated license issued under section 53-124.16 may apply to the local governing body of a city, village, or county for a permit to use the promotional farmers market special designated license to sell or dispense alcoholic liquor, which the holder is licensed to produce, for consumption at a farmers market located within the jurisdiction of the local governing body.

(2) A permit may be issued to the licensee for the duration of an annual farmers market without reapplying to the local governing body. The local governing body may issue multiple permits to a licensee for each separate farmers market location within the jurisdiction of the local governing body.

(3) For purposes of this section, local governing body means the governing body of the city or village within which the farmers market for which the permit is requested is located or, if such farmers market is not within the

corporate limits of a city or village, local governing body means the governing body of the county within which the farmers market for which the permit is requested is located.

(4) No permit shall be granted under this section without the approval of the local governing body and the submission of a safety and security plan containing such information as the local governing body may require for use of the promotional farmers market special designated license. The local governing body may establish criteria for approving or denying a permit. The local governing body may designate an agent to determine whether a permit 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.

(5) The decision of the local governing body shall be final. If the applicant does not qualify for a permit to use the promotional farmers market special designated license to sell or dispense alcoholic liquor, including beer, for consumption at a farmers market, the permit shall be denied.

(6) The city, village, or county clerk shall deliver confirmation of the permit to use the promotional farmers market special designated license to sell or dispense alcoholic liquor, including beer, for consumption at a farmers market to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

(7) The local governing body shall electronically notify the commission within five days after the authorization of any permit under this section for the holder of a promotional farmers market special designated license.

Source: Laws 2021, LB274, § 14.

Operative date May 26, 2021.

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.

One is unable to renew liquor license for premises when not in possession of either lease or deed to such premises. III Lounge, Inc. v. Gaines, 227 Neb. 585, 419 N.W.2d 143 (1988).

The phrase not of good character concerning eligibility for a license imports lack of good faith or honesty of purpose. C & L Co. v. Nebraska Liquor Control Commission, 190 Neb. 91, 206 N.W.2d 49 (1973).

In exercising discretion to refuse license, Nebraska Liquor Control Commission may consider factors in addition to those

set out in this section. T & N P Co., Inc. v. Nebraska Liquor Control Commission, 189 Neb. 708, 204 N.W.2d 809 (1973).

A liquor license may be issued to a partnership. Stevens v. Fall, 133 Neb. 610, 276 N.W. 401 (1937).

A party who has tendered a guilty plea under a deferred judgment statute of another state has not necessarily been convicted of or pleaded guilty to an offense within the meaning of this statute. McHenry v. Nebraska Liquor Control Comm., 5 Neb. App. 95, 555 N.W.2d 350 (1996).

53-126 License to corporation; conditions.

No corporation organized under the laws of this state, any other state, or any foreign country shall be issued any license provided for in the Nebraska Liquor Control Act unless such corporation is duly registered with the Secretary of State to transact business in this state. If such corporation is owned by a corporation, the owning corporation shall also be duly registered with the Secretary of State to transact business in this state.

Source: Laws 1935, c. 116, § 33, p. 398; C.S.Supp.,1941, § 53-333; R.S.1943, § 53-126; Laws 1983, LB 447, § 75; Laws 1991, LB 344, § 31.

Agent of corporation licensee must be satisfactory to and approved by the commission with respect to his character. C & L Co. v. Nebraska Liquor Control Commission, 190 Neb. 91, 206 N.W.2d 49 (1973).

In exercising discretion to refuse license, Nebraska Liquor Control Commission may consider factors in addition to those set out in this section. T & N P Co., Inc. v. Nebraska Liquor Control Commission, 189 Neb. 708, 204 N.W.2d 809 (1973).

53-127 Repealed. Laws 1989, LB 781, § 20; Laws 1993, LB 183, § 20.**53-128 Transferred to section 53-116.02.****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.

If a named licensee desires to relocate the license, the licensee may do so under the provisions of this section by making application to either the Nebraska Liquor Control Commission or the local governing body. The relocation of a license from its issued premises to new premises is dependent upon approval by the local governing body. *City of Lincoln v. Nebraska Liquor Control Comm.*, 208 Neb. 630, 304 N.W.2d 922 (1981).

An agreement between lessor and lessee that lessee will apply for a license for the premises, and will not seek permission to transfer it to another location, and upon expiration of the lease will assist lessor in obtaining a license for the premises is not void. *Greco v. Bonacci*, 194 Neb. 685, 234 N.W.2d 904 (1975).

Where licensee stored alcoholic beverages in an unauthorized area without permission of the commission and permitted part of licensed premises to be used for gambling, suspension of license was authorized and reasonable. *O'Connor v. Nebraska Liquor Control Commission*, 191 Neb. 436, 215 N.W.2d 635 (1974).

Purpose of this section is to provide a short procedure for change of location of business of licensee. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

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.

53-130.01 Beer; manufacturers and shippers; file notice; contents.

Every manufacturer or shipper of beer shall, before commencing or continuing business, file with the commission a notice in writing stating the name of the person, company, corporation, or firm, the names of the members of any such company or firm, the place of residence of such persons, a legal description of the premises on which the office of the manufacturer or shipper is situated and the title to such premises, and the name of the owner thereof.

Source: Laws 1935, c. 116, § 23, p. 388; C.S.Supp.,1941, § 53-323; R.S.1943, § 53-159; Laws 1988, LB 1089, § 21; Laws 1989, LB 780, § 11; R.S.Supp.,1990, § 53-159; Laws 1991, LB 344, § 33.

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.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

Failure to obtain approval to relocate a license pursuant to section 53-129, R.R.S.1943 does not mean that another license may not be sought under this section. *City of Lincoln v. Nebraska Liquor Control Comm.*, 208 Neb. 630, 304 N.W.2d 922 (1981).

City council's resolution approving applicant's request for Class C license includes, by implication, a recommendation for a Class D license. *Winkelman v. Nebraska Liquor Control Commission*, 198 Neb. 481, 253 N.W.2d 307 (1977).

Applications to provide license were properly filed under this section. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Application for package liquor license was properly made to Liquor Control Commission. *Allen v. Nebraska Liquor Control Commission*, 179 Neb. 767, 140 N.W.2d 413 (1966).

This section provides for the issuance of a license to sell alcoholic liquor including beer at retail, and is controlling over another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

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.

1. License issuance allowed
2. License issuance denied
3. Miscellaneous

1. License issuance allowed

Decision of district court reversing city council's disapproval of class D liquor licenses for grocery stores affirmed because grocery stores met license issuance criteria set forth in statute. *B & R Stores v. City of Lincoln*, 245 Neb. 76, 511 N.W.2d 101 (1994).

Recommendation of denial made by city council based only on belief sufficient licenses exist does not justify denial of otherwise valid application. *McChesney v. City of No. Platte*, 216 Neb. 416, 343 N.W.2d 925 (1984).

In administrative hearing for license not required by section 53-133(1), where evidence fails to establish valid ground for denial, this section requires that license be issued. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

In the absence of protest within three days, license must be issued. *State ex rel. Smith v. Nebraska Liquor Control Commission*, 152 Neb. 676, 42 N.W.2d 297 (1950).

License issues as a matter of course under certain conditions. *Leeman v. Vocelka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

2. License issuance denied

A district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license was affirmed where the district court properly considered all the factors listed in subsection (3) and where the court's decision was not arbitrary, capricious, or unreasonable. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

Recommendation of denial of license by local governing body to commission may be enough to justify denial. *Kerrey's, Inc. v. Neb. Liquor Control Comm.*, 213 Neb. 442, 329 N.W.2d 364 (1983).

3. Miscellaneous

The limit to two times the license fee pertains only to taxes on the occupation of selling alcohol and has no bearing on occupation taxes designed to target activities other than selling alcoholic beverages. *Anthony, Inc. v. City of Omaha*, 283 Neb. 868, 813 N.W.2d 467 (2012).

In order to issue a retail liquor license, the Nebraska Liquor Control Commission must find that each of the conditions specified in subsections (2)(a) through (d) of this section are satisfied, and in making its determination whether such conditions are satisfied, the commission must consider each of the factors listed in subsections (3)(a) through (j) of this section. *City of Lincoln v. Nebraska Liquor Control Comm.*, 261 Neb. 783, 626 N.W.2d 518 (2001).

Subsection (2) of this section (Reissue 1984) describes the general standards by which initial applicants are judged to be fit to obtain a liquor license and to follow the rules and regulations that bear on license holders. This statute, however, is not itself a rule or regulation which can be violated by a current licensee and subject the licensee to cancellation under the power given the Nebraska Liquor Control Commission by sections 53-116.01 and 53-117.08. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

This section, as amended by 1993 Neb. Laws, L.B. 183, is unenforceable. *Marting v. Nebraska Liquor Control Comm.*, 250 Neb. 134, 548 N.W.2d 326 (1996).

For purposes of this section, there is no close approximation between purchasing off-sale liquor at a grocery store and purchasing and consuming liquor in an "on premises" establishment. *Hy-Vee Food Stores v. Nebraska Liquor Control Comm.*, 242 Neb. 752, 497 N.W.2d 647 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The applicant for a liquor license has the burden of proof, at the hearing before the Nebraska Liquor Control Commission, to show that the issuance of the license is or will be required by the present or future public convenience and necessity. *Richards v. Neb. Liquor Control Comm.*, 221 Neb. 542, 378 N.W.2d 667 (1985).

Failure by liquor commission to make fact findings and conclusions of law makes its order irregular, which requires remand to make appropriate findings. *McChesney v. City of No. Platte*, 216 Neb. 416, 343 N.W.2d 925 (1984).

This section provides for the issuance of a license to sell alcoholic liquor, including beer, at retail, and is controlling over another section declaring public policy in favor of separate sale. *Hanson v. Gass*, 130 Neb. 685, 267 N.W. 403 (1936).

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.

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

Absence of need alone is not a sufficient reason to deny an otherwise proper application for a liquor license. *Joe & Al's IGA, Inc. v. Nebraska Liquor Control Commission*, 203 Neb. 176, 277 N.W.2d 693 (1979).

On objection to application for liquor license, where hearing is required, the matter becomes a contested case under section 84-901(3), and notice to applicant of the issues is necessary. *J K & J, Inc. v. Nebraska Liquor Control Commission*, 194 Neb. 413, 231 N.W.2d 694 (1975).

In administrative hearing on application for license not required by this section where evidence fails to establish valid

ground for denial, Nebraska Liquor Control Commission is required to cause license to be issued. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

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 commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs;

(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; and

(9) To review and authorize an application by a craft brewery, farm winery, or microdistillery licensee that holds a promotional farmers market special designated license for a permit to use such promotional farmers market special designated license to sell or dispense alcoholic liquor, which the holder is licensed to produce, at a farmers market within the jurisdiction of the local governing body as provided in section 53-124.17. The local governing body shall electronically notify the commission within five days after authorization of any permit pursuant to this subdivision.

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; Laws 2021, LB274, § 17.

Operative date May 26, 2021.

The plain language of this section does not allow a county to revoke a liquor license based upon a resolution. *DLH, Inc. v. Lancaster Cty. Bd. of Comrs.*, 264 Neb. 358, 648 N.W.2d 277 (2002).

The provisions of this section give a local governing board the authority to cancel or to revoke a liquor license, providing that a multistep process is followed. Any cancellation or revocation is subject to appeal to the Nebraska Liquor Control Commission. *Luet, Inc. v. City of Omaha*, 247 Neb. 831, 530 N.W.2d 633 (1995).

This section, as amended by L.B. 781, is unconstitutionally vague and unconstitutionally delegates legislative power. *Kwik Shop v. City of Lincoln*, 243 Neb. 178, 498 N.W.2d 102 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

The action of five members of the city council, in recommending denial of a liquor license, must be considered a nullity and, therefore, not a denial when a city ordinance requires a quorum of six before business may be transacted. *Bond v. Nebraska Liquor Control Comm.*, 210 Neb. 663, 316 N.W.2d 600 (1982).

This section authorized ordinance which provides that any liquor licensee who voluntarily closed his licensed premises for ten days without permission shall have elected to discontinue business under such license. *Bali Hai', Inc. v. Nebraska Liquor Control Commission*, 195 Neb. 1, 236 N.W.2d 614 (1975).

To be valid, a resolution recommending issuance or refusal of liquor license must be adopted by a majority of all elected members of city council. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

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.

53-134.02 Local governing bodies; authority under act.

Local governing bodies shall only have authority to approve applications and deny licenses pursuant to the Nebraska Liquor Control Act.

Source: Laws 1989, LB 781, § 13; Laws 1993, LB 183, § 15.

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.

Where city had not by ordinance attempted to regulate the location of the place of business of licensee, commission could grant license over objection of city. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Power to regulate sale of beer lies in local municipality. *Phelps Inc. v. City of Hastings*, 152 Neb. 651, 42 N.W.2d 300 (1950).

Despite absence of severance clause, ordinance which provided several distinct and separate grounds upon which to base revocation of liquor licenses was not rendered invalid in its entirety by reason of invalidity of some portions. *Clark v. City of Fremont*, 377 F.Supp. 327 (D. Neb. 1977).

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 commission 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.

An appeal from the district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license under section 53-135.02 was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

An administrative agency is limited in authority to those powers granted to it by statute. Thus, without a showing by the Nebraska Liquor Control Commission or the objecting city that a renewal applicant did not meet one of the renewal requirements of this section and section 53-135.02, the commission

could not demand that the applicant submit a long-form liquor license application. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

A liquor license which has been renewed by the Nebraska Liquor Control Commission pursuant to this section cannot be revoked by action of a city council. *Luet, Inc. v. City of Omaha*, 247 Neb. 831, 530 N.W.2d 633 (1995).

The language of section 53-150 and this section discloses a legislative intent to codify a practice of approving an application for continuation of an existing liquor license in the absence of a change of circumstances indicated on the licensee's renewal application. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

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.

53-135.02 Licenses; renewal; no vested right.

Any licensee may renew his, her, or its license at the expiration thereof in the manner set forth in section 53-135 if the licensee is then qualified to receive a license and the premises for which such renewal license is sought are the same premises licensed under the license to be renewed and are suitable for such purpose. The renewal privilege provided for in this section shall not be construed as a vested right which shall in any case prevent the commission from decreasing the number of licenses to be issued within its jurisdiction.

Source: Laws 1935, c. 116, § 27, p. 394; C.S.Supp.,1941, § 53-327; R.S.1943, § 53-150; Laws 1959, c. 249, § 17, p. 874; R.S.1943, (1988), § 53-150; Laws 1991, LB 344, § 42.

An appeal from the district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license under this section was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007).

An administrative agency is limited in authority to those powers granted to it by statute. Thus, without a showing by the Nebraska Liquor Control Commission or the objecting city that a renewal applicant did not meet one of the renewal requirements of this section and section 53-135, the commission could not demand that the applicant submit a long-form liquor license application. *Grand Island Latin Club v. Nebraska Liq. Cont. Comm.*, 251 Neb. 61, 554 N.W.2d 778 (1996).

As the result of the renewal privilege established by this section, a licensee is entitled to renewal of a liquor license, that is, continuation of an existing license, if at the time for renewal the licensee meets the requirements which existed when the license to be renewed was initially issued. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

The language of section 53-135 and this section discloses a legislative intent to codify a practice of approving an application for continuation of an existing liquor license in the absence of a change of circumstances indicated on the licensee's renewal application. *Pump & Pantry, Inc. v. City of Grand Island*, 233 Neb. 191, 444 N.W.2d 312 (1989).

District court cannot enjoin hearing by municipality with respect to issuance or revocation of liquor license. *Leeman v. Vocolka*, 149 Neb. 702, 32 N.W.2d 274 (1948).

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.

53-138.02 Repealed. Laws 1991, LB 344, § 75.**53-138.03 Nonprofit corporations; license; required.**

A nonprofit corporation shall not engage in the sale of alcoholic liquor without first having obtained a license required by the Nebraska Liquor Control Act.

Source: Laws 1963, c. 310, § 11, p. 934; Laws 1965, c. 318, § 8, p. 898; Laws 1983, LB 213, § 17; Laws 2004, LB 485, § 27.

Cross References

For general penalties, see section 53-1,100 et seq.

53-139 Retail licenses to restaurants and clubs; conditions.

No person shall receive a retail license to sell alcoholic liquor upon any premises used as a restaurant or as a club unless such premises or plan of operation strictly complies with sections 53-103.09 and 53-103.30.

Source: Laws 1935, c. 116, § 93, p. 425; C.S.Supp.,1941, § 53-393; R.S.1943, § 53-139; Laws 1989, LB 441, § 6; Laws 1994, LB 859, § 6; Laws 2010, LB861, § 71.

53-140 Transferred to section 53-117.07.**53-140.01 Repealed. Laws 1991, LB 344, § 75; Laws 1991, LB 586, § 4.****53-141 Repealed. Laws 1980, LB 848, § 25.****53-142 Transferred to section 53-131.01.****53-143 Repealed. Laws 1980, LB 848, § 25.****53-144 Repealed. Laws 1991, LB 344, § 75.****53-145 Transferred to section 53-160.02.****53-146 Transferred to section 53-116.01.****53-147 Transferred to section 53-134.03.****53-148 Licenses; display.**

Every licensee shall cause his license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises.

Source: Laws 1935, c. 116, § 43, p. 402; C.S.Supp.,1941, § 53-343; R.S.1943, § 53-148.

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.

53-149 Licenses; term; sale of premises; temporary operating permit; false information; penalty; license not assignable or inheritable; exception; effect of death or bankruptcy of licensee.

(1) A license shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner revoked as provided in the Nebraska Liquor Control Act, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated.

(2) A license issued under the act terminates immediately upon the sale of the licensed premises named in such license. The purchaser or transferee may submit an application for a license under the act prior to closing such sale or transfer. While such application is pending, the purchaser may request and obtain a temporary operating permit from the commission which shall authorize the purchaser to continue the business which was conducted on the purchased premises under the terms and conditions of the terminated license for ninety days or until the purchaser has obtained a license in its own name, whichever occurs sooner. Prior to the issuance of a temporary operating permit, the purchaser shall supply the commission with documentation from the seller that the seller is current on all accounts with any wholesaler under section 53-123.02. A seller who provides false information regarding such accounts is guilty of a Class IV misdemeanor for each offense. In the absence of such temporary operating permit, the purchaser shall not manufacture, store, or sell alcoholic liquor on the purchased premises until the purchaser has obtained a license in the purchaser's own name. If the application is withdrawn by the applicant or is denied by the commission, the previous license may be reinstated at the discretion of the commission upon request by the previous licensee.

(3) A license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the licensee, except that (a) executors or administrators of the estate of any deceased licensee, when such estate consists in part of alcoholic liquor, or a partnership or limited liability company upon the death of one or more of the partners or members, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the deceased or deceased partner or member after the death of such decedent until the expiration of such license, but if such license would have expired within two months following the death of the licensee, the license may be renewed by the administrators or executors with the approval of the appropriate court for a period not to exceed one additional year; or (b) when a license is issued to a husband and wife, as colicensees with rights of survivorship, upon the death of one spouse the survivor may exercise all rights and privileges under such license in his or her own name. The trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the insolvent or bankrupt licensee until the expiration of such license.

Source: Laws 1935, c. 116, § 27, p. 394; C.S.Supp.,1941, § 53-327; R.S.1943, § 53-149; Laws 1959, c. 249, § 16, p. 874; Laws 1972, LB 1375, § 1; Laws 1976, LB 204, § 5; Laws 1993, LB 121, § 320; Laws 2010, LB861, § 72.

- 1. License is personal privilege
- 2. Rights of licensee
- 3. Miscellaneous

1. License is personal privilege

The payment of rent to a lessor based on a percentage of sales does not create a partnership between the lessor and lessee in violation of this section, which states that a liquor license is a privilege personal to the grantee, nor does it violate rules 20 and 14(E) of the Nebraska Liquor Control Commission, which prohibit any partner from sharing in profits arising from the granting of any liquor license. Department of Banking, Receiver v. Wilken, 217 Neb. 796, 352 N.W.2d 145 (1984).

A liquor license is a purely personal privilege, does not constitute property, and vests no property rights in a licensee. Bali Hai', Inc. v. Nebraska Liquor Control Commission, 195 Neb. 1, 236 N.W.2d 614 (1975).

Fact that license is a privilege does not prevent license holder from complaining of unconstitutional rules and regulations. Terry Carpenter, Inc. v. Nebraska Liquor Control Commission, 175 Neb. 26, 120 N.W.2d 374 (1963).

A license to sell liquors is purely a personal privilege and not transferable. Stevens v. Fall, 133 Neb. 610, 276 N.W. 401 (1937).

2. Rights of licensee

A liquor license is not such a property right as will be protected by injunction. Leeman v. Vocelka, 149 Neb. 702, 32 N.W.2d 274 (1948).

License to sell liquors is not alienable, transferable, or subject to encumbrance or hypothecation. Marsh & Marsh, Inc. v. Carmichael, 136 Neb. 797, 287 N.W. 616 (1939).

3. Miscellaneous

An agreement between lessor and lessee that lessee will apply for a license for the premises, and will not seek permission to transfer it to another location, and upon expiration of the lease will assist lessor in obtaining a license for the premises is not void. Greco v. Bonacci, 194 Neb. 685, 234 N.W.2d 904 (1975).

Licensee was in violation of this section when he permitted another to operate and control the business. Eleven Eighteen Co. v. Nebraska Liquor Control Commission, 191 Neb. 572, 216 N.W.2d 720 (1974).

53-150 Transferred to section 53-135.02.

(e) BONDED WAREHOUSES

53-151 Repealed. Laws 1991, LB 344, § 75.

53-152 Repealed. Laws 1991, LB 344, § 75.

53-153 Repealed. Laws 1991, LB 344, § 75.

53-154 Repealed. Laws 1991, LB 344, § 75.

53-155 Repealed. Laws 1991, LB 344, § 75.

53-156 Repealed. Laws 1991, LB 344, § 75.

53-157 Transferred to section 53-164.02.

53-158 Repealed. Laws 1991, LB 344, § 75.

53-159 Transferred to section 53-130.01.

(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.

53-160.01 Tax on manufacturer and wholesaler; instrumentality of armed forces of United States; resale; exemption.

No excise taxes of this state, direct or indirect, shall be imposed upon the sale, use, delivery, or storage of articles of merchandise to any instrumentality of the armed forces of the United States engaged in resale activities, except

those state excise taxes which may be specifically authorized by the various acts of the Congress of the United States.

Source: Laws 1951, c. 180, § 1, p. 683; Laws 1985, LB 359, § 2.

53-160.02 Near beer; regulation.

The manufacture, distribution, sale, and purchase of near beer shall be subject to all provisions of the Nebraska Liquor Control Act, except taxation provisions, to which the manufacture, distribution, sale, and purchase of beer are subject.

Source: Laws 1989, LB 441, § 7; R.S.Supp.,1990, § 53-145; Laws 1991, LB 344, § 45.

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.

53-160.04 Ready-to-drink cocktails; tax on manufacturer or wholesaler; amount; exemption; duties of commission.

(1) Notwithstanding any other provision of the Nebraska Liquor Control Act, for the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler of ready-to-drink cocktails at a rate of ninety-five cents per gallon. The gallonage tax imposed by this section shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of ready-to-drink cocktails shall be exempt from the payment of the gallonage tax imposed by this section on such products upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such ready-to-drink cocktails were manufactured in this state but shipped out of this state for sale and consumption outside this state.

(3) The gallonage tax imposed by this section shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(4) The commission shall collect the gallonage tax on ready-to-drink cocktails and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any spirits manufactured in or shipped into this state are sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of ready-to-drink cocktails 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 spirits 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 2021, LB274, § 6.
Operative date July 1, 2021.

53-160.05 Repealed. Laws 1981, LB 497, § 1.

53-160.06 Repealed. Laws 1981, LB 497, § 1.

53-160.07 Repealed. Laws 1981, LB 497, § 1.

53-160.08 Transferred to section 53-178.01.

53-160.09 Repealed. Laws 1989, LB 1, § 1.**53-161 Beer; credit for tax paid; when allowed.**

The commission shall allow credit to any wholesaler for tax paid under section 53-160 (1) for beer shipped out of this state for sale and consumption outside of the state or (2) for beer returned to the manufacturer for credit, substitution, or replacement, and such credit shall be allowed whether such beer is a part of the original inventory of such wholesaler or returned to such wholesaler by a licensee authorized to purchase beer from a wholesaler.

Source: Laws 1935, c. 116, § 51, p. 407; Laws 1941, c. 109, § 1, p. 431; C.S.Supp.,1941, § 53-351; R.S.1943, § 53-161; Laws 1951, c. 173, § 1, p. 662; Laws 1955, c. 201, § 2, p. 571; Laws 1961, c. 259, § 7, p. 771; Laws 1963, c. 311, § 5, p. 938; Laws 1965, c. 321, § 1, p. 913; Laws 1991, LB 344, § 46.

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.

53-162.01 Repealed. Laws 1963, c. 311, § 7.**53-163 Commission; rounding of amounts on returns or reports; authorized.**

When the commission finds that the administration of the state alcohol excise tax laws might be more efficiently and economically conducted, the commission may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts shall be rounded to the nearest dollar with amounts ending in fifty cents or more rounded to the next highest dollar.

Source: Laws 2007, LB578, § 2.

53-164 Repealed. Laws 1963, c. 311, § 7.**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.

53-164.02 Evasion of liquor tax; acts forbidden; violations; penalty.

It shall be unlawful for any person to evade or attempt to evade the payment of tax on any alcoholic liquor in any manner whatever, and upon conviction thereof, in addition to the penalty prescribed for the violation of the Nebraska Liquor Control Act, such person shall forfeit and pay, as a part of costs in such action, double the amount of the tax so evaded or attempted to be evaded. Any person who violates this section shall be guilty of a Class II misdemeanor.

Source: Laws 1935, c. 116, § 21, p. 387; C.S.Supp.,1941, § 53-321; R.S.1943, § 53-157; Laws 1961, c. 259, § 6, p. 770; Laws 1963, c. 311, § 4, p. 938; Laws 1977, LB 40, § 314; R.S.1943, (1988), § 53-157; Laws 1991, LB 344, § 48.

(g) MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

53-165 Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.

(1) Every manufacturer and wholesaler shall, between the first and fifteenth day of each calendar month, make return to the commission of all alcoholic liquor manufactured and sold by such manufacturer or wholesaler in the course of such business during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commission and shall contain such other information as the commission may reasonably require.

(2) Every manufacturer or shipper of beer on filing notice of intention to commence or continue business pursuant to section 53-130.01 shall certify that such manufacturer or shipper will keep or cause to be kept books and records and make reports in the manner and for the purposes specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, and that such manufacturer or shipper will in all respects faithfully comply with all of the requirements of the laws of this state and the rules and regulations of the commission relating to the manufacture and shipping to licensed retail beer dealers in this state.

(3) Each manufacturer and wholesaler shall keep complete and accurate records of all sales of liquor, wine, or beer and complete and accurate records of all such alcoholic liquor produced, manufactured, compounded, or imported.

Source: Laws 1935, c. 116, § 55, p. 408; C.S.Supp.,1941, § 53-355; R.S.1943, § 53-165; Laws 1991, LB 344, § 50; Laws 2006, LB 1003, § 4.

53-166 Repealed. Laws 1991, LB 344, § 75.

53-166.01 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

53-166.16 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

53-166.17 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 53-166.01 to 53-166.17, which the Supreme Court has held to be unconstitutional. *United States Brewers' Assn., Inc. v. State*, 192 Neb. 328, 220 N.W.2d 544 (1974).

(h) KEG SALES

53-167 Repealed. Laws 1977, LB 176, § 2.

53-167.01 Legislative findings.

The Legislature finds that every year hundreds of people, many of them teenagers, are seriously injured or killed as a result of alcohol-related accidents. In recognition of such facts it is the intent of the Legislature, through the implementation of section 53-167.02, to protect the public health, safety, and welfare of all Nebraskans.

Source: Laws 1993, LB 332, § 2.

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.

53-167.04 Repealed. Laws 2006, LB 562, § 8.

(i) PROHIBITED ACTS

53-168 Receiving money, credit, discounts, rebates, or other inducement; unlawful acts; penalty; private or generic label permitted.

(1) It shall be unlawful for any person having a retail license to sell beer to accept credit for the purchase of beer from any manufacturer or wholesaler of beer and for any person having a retail license to sell alcoholic liquor or any officer, associate, member, representative, or agent of such licensee to accept, receive, or borrow money or anything else of value or to accept or to receive credit, other than merchandising credit in the ordinary course of business for a period not to exceed thirty days, directly or indirectly, from (a) any person, partnership, limited liability company, or corporation engaged in manufacturing or wholesaling such liquor, (b) any person connected with or in any way representing such manufacturer or wholesaler, (c) any member of the family of such manufacturer or wholesaler, (d) any stockholders in any corporation engaged in manufacturing or wholesaling such liquor, or (e) any officer, manager, agent, member, or representative of such manufacturer or wholesaler.

(2) It shall be unlawful for any manufacturer or wholesaler to give or lend money or otherwise loan or extend credit, except the merchandising credit referred to in subsection (1) of this section, directly or indirectly, to any such licensee or to the manager, representative, agent, member, officer, or director of such licensee. It shall be unlawful for any wholesaler to participate in any manner in a merchandising and coupon plan of any manufacturer involving alcoholic liquor and the redemption in cash. The redemption of any merchandising and coupon plan involving cash shall be made by the manufacturer to the consumer.

(3) If any holder of a license to sell alcoholic liquor at retail or wholesale violates subsection (1) or (2) of this section, such license shall be suspended or

revoked by the commission in the manner provided by the Nebraska Liquor Control Act.

(4) It shall not be a violation of subsection (1) or (2) of this section for a manufacturer or wholesaler to sell or provide alcoholic liquor exclusively or in minimum quantities in containers bearing a private label or to sell or provide alcoholic liquor in containers bearing a generic label to a wholesaler or retailer.

(5) It shall not be a violation of subsection (1) or (2) of this section for a wholesaler or retailer to accept or purchase from a manufacturer or wholesaler alcoholic liquor exclusively or in minimum quantities in containers bearing a private label or for a wholesaler or retailer to accept or purchase from a manufacturer or wholesaler alcoholic liquor in containers bearing a generic label.

Source: Laws 1935, c. 116, § 29, p. 395; Laws 1941, c. 104, § 1, p. 424; C.S.Supp., 1941, § 53-329; R.S. 1943, § 53-168; Laws 1953, c. 182, § 2, p. 573; Laws 1953, c. 181, § 1, p. 571; Laws 1967, c. 335, § 1, p. 896; Laws 1969, c. 441, § 1, p. 1475; Laws 1969, c. 442, § 1, p. 1478; Laws 1969, c. 443, § 1, p. 1480; Laws 1980, LB 874, § 1; Laws 1981, LB 483, § 2; Laws 1985, LB 183, § 2; Laws 1991, LB 344, § 51; Laws 1993, LB 121, § 321; Laws 2004, LB 485, § 28.

The 1969 amendment making it unlawful for any manufacturer, distributor, or wholesaler of alcoholic liquor to give discounts to any retailer is constitutional. *Central Markets West, Inc. v. State*, 186 Neb. 79, 180 N.W.2d 880 (1970) supplemental opinion, 186 Neb. 276, 182 N.W.2d 898 (1971).

The 1967 amendment to this section prohibiting a retailer from accepting credit for the purchase of beer from a wholesaler is constitutional; exception as to baseball stadiums is unconstitutional. *Tom & Jerry, Inc. v. Nebraska Liquor Control Commission*, 183 Neb. 410, 160 N.W.2d 232 (1968).

Liquor Control Commission cannot adopt rules and regulations in conflict with Liquor Control Act. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963).

Provisions of rule promulgated by the Liquor Control Commission authorizing the giving away of advertising novelties were invalid. *State ex rel. Nebraska Beer Wholesalers Assn. v. Young*, 153 Neb. 395, 44 N.W.2d 806 (1950).

53-168.01 Repealed. Laws 1991, LB 344, § 75.

53-168.02 Repealed. Laws 1985, LB 183, § 7.

53-168.03 Repealed. Laws 1985, LB 183, § 7.

53-168.04 Repealed. Laws 1985, LB 183, § 7.

53-168.05 Violations; procedure.

The commission may revoke or suspend the license of any manufacturer, wholesaler, or retailer found violating section 53-169, and all proceedings under such section shall be governed by the provisions of the Nebraska Liquor Control Act governing the suspension or revocation of licenses and the appeals to the courts from any orders of the commission.

Source: Laws 1971, LB 751, § 6; Laws 1985, LB 183, § 4; Laws 1991, LB 344, § 53.

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.

Exemption accorded to possession of liquor for personal use of possessor, his family, or guests did not apply to business conducted as a common nuisance. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958).

Possession of intoxicating liquor for personal use is authorized. State v. Kubik, 159 Neb. 509, 67 N.W.2d 755 (1954).

Purpose of Liquor Control Act was to govern and control sale and use of alcoholic liquors. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

The Nebraska Liquor Control Commission is empowered to determine, by reasonable regulations, the hours for sale of beer outside the corporate limits of cities and villages, regardless of its alcoholic content. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

It is a penal offense for owner and operator of a truck, not designated as a carrier or granted a permit therefor, to transport from another state a cargo of unstamped alcoholic liquors consigned to a bonded warehouse of liquors in this state. *State v. Hyslop*, 131 Neb. 681, 269 N.W. 512 (1936).

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 ownership, 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.

The interest forbidden by this section is a financial or business interest. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 269 Neb. 401, 693 N.W.2d 539 (2005).

While the forbidden interest in this section is worded as that of the manufacturer in the wholesaler and not the interest of the wholesaler in the manufacturer, the obvious intent of the Legislature is to forbid both types of interests. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 269 Neb. 401, 693 N.W.2d 539 (2005).

Amendments made to this section by Laws 2007, LB 578, contained a Grandfather Clause that violated the Equal Protection Clause and the Privileges and Immunities Clause of the United States Constitution and the Grandfather Clause was not severable from the other amendments. The section as amended is unconstitutional. *Southern Wine & Spirits of America Inc. v. Heineman*, 534 F.Supp.2d 1001 (D.Neb.2008).

53-170 Violations; effect.

Any licensee who permits, assents, or is a party in any way to any violation or infringement of the Nebraska Liquor Control Act shall be deemed guilty of a violation of the act. Any money loaned contrary to a provision of the act shall not be recovered back. Any note, mortgage, or other evidence of indebtedness, any security, or any lease or contract obtained or made contrary to the act shall be unenforceable and void.

Source: Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-170; Laws 1994, LB 859, § 7.

53-170.01 Repealed. Laws 1991, LB 344, § 75.

53-170.02 Repealed. Laws 1991, LB 344, § 75.

53-170.03 Repealed. Laws 1991, LB 344, § 75.

53-170.04 Repealed. Laws 1991, LB 344, § 75.

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.

53-172 Original packages; labels; seals; requirements.

No manufacturer or wholesaler shall sell or deliver any original package containing alcoholic liquor, except beer and wine, manufactured or distributed by him or her unless the package has affixed thereto a clear and legible label containing the name and address of the manufacturer, the kind of alcoholic liquor contained in the package, and, in the case of alcoholic liquor other than beer, the date when manufactured. No original package of alcoholic liquor shall be delivered by any manufacturer or wholesaler unless the package is securely sealed so that the contents cannot be removed without breaking the seal placed thereon by such manufacturer, and no other licensee shall sell, have in his or her possession, or use any original package which does not comply with this section or which does not bear evidence that such original package, when delivered to him or her, complied with this section.

Source: Laws 1935, c. 116, § 31, p. 397; C.S.Supp.,1941, § 53-331; R.S.1943, § 53-172; Laws 1955, c. 201, § 5, p. 575; Laws 1961, c. 259, § 11, p. 773; Laws 1963, c. 311, § 6, p. 939; Laws 1989, LB 780, § 13; Laws 1991, LB 344, § 57; Laws 2010, LB861, § 75.

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.

53-174 Repealed. Laws 2010, LB 861, § 85.

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.

53-176 Sale or delivery to unauthorized person forbidden; suspension, cancellation, or revocation of license.

No manufacturer or wholesaler shall sell or deliver any package containing alcoholic liquor manufactured or distributed by such manufacturer or wholesaler for resale unless the person to whom such package is sold or delivered is authorized to receive such package in accordance with the Nebraska Liquor Control Act. The commission shall suspend, cancel, or revoke the license of any manufacturer or wholesaler who violates this section.

Source: Laws 1935, c. 116, § 34, p. 399; C.S.Supp.,1941, § 53-334; R.S.1943, § 53-176; Laws 1979, LB 224, § 6; Laws 1980, LB 848, § 16; Laws 1991, LB 344, § 59.

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.

The plain, ordinary, and popular meaning of the word "church" includes a building in which people assemble for the worship of God and for the administration of such offices and services as pertain to that worship, a building used predominantly for the honor of God and religion, and a place where persons regularly assemble for worship. A building which is used predominantly for the honor of a religion would likewise

include buildings in which people assemble for non-Christian worship, such as a mosque, a synagogue, or a temple. *City of Omaha v. Kum & Go*, 263 Neb. 724, 642 N.W.2d 154 (2002).

Distance between church and place where intoxicating liquor is sold is measured in a straight line between the nearest walls of the two buildings. *Calvary Baptist Church v. Coonrad*, 163 Neb. 25, 77 N.W.2d 821 (1956).

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.

53-178.01 Licensee; sale to person within motor vehicle; prohibited; exceptions.

(1) No licensee shall sell alcoholic liquor, including beer, to any person for consumption off the licensed premises while such person is in any manner within any motor vehicle except as provided in subsection (2) of this section.

(2)(a) A business holding a Class B, Class C, Class D, Class L, Class Y, or Class Z license to sell alcoholic liquor at retail may sell alcoholic liquor authorized under such license to a person twenty-one years of age or older within a motor vehicle if (a) the alcoholic liquor is sold along with food, (b) the motor vehicle is in park, and (c) the alcoholic liquor is 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.

(b) A licensee which sells alcoholic liquor in the manner authorized under this section shall provide notice to the commission during initial licensure or at the time of the licensee's annual renewal regarding such sales.

(3) This section shall not apply to sales to handicapped persons in a motor vehicle displaying a current handicapped license plate issued by the Department of Motor Vehicles.

Source: Laws 1965, c. 318, § 17, p. 903; Laws 1973, LB 111, § 7; Laws 1978, LB 386, § 7; R.S.1943, (1984), § 53-160.08; Laws 1991, LB 344, § 60; Laws 2021, LB274, § 18.

Operative date May 26, 2021.

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.

Amendment to this section, made by Chapter 5, Seventy-fourth Extraordinary Session of the Legislature, 1963, was unconstitutional because not within the Governor's call. *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

There are no restrictions imposed by this section on the right of the Liquor Control Commission to determine the permissible hours for sale of beer outside the corporate limits of cities and villages. *Griffin v. Gass*, 133 Neb. 56, 274 N.W. 193 (1937).

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.

This section does not make it a crime to permit the possession or consumption of alcohol by a minor. *State v. Jansen*, 241 Neb. 196, 486 N.W.2d 913 (1992).

A criminal conviction under this section may rest upon circumstantial evidence. *State v. Wilson*, 238 Neb. 217, 469 N.W.2d 749 (1991).

This section does not create a duty toward third parties, and, as such, it does not fix a standard of care, the violation of which could be proof of negligence in actions by third parties. *Pelzek v. American Legion*, 236 Neb. 608, 463 N.W.2d 321 (1990).

In procuring liquor for a minor, which does not involve a specific criminal intent, the general criminal intent is supplied by the performance of the proscribed act. *State v. Lesiak*, 234 Neb. 163, 449 N.W.2d 550 (1989).

This section does not create a duty toward third parties and, therefore, the statute does not fix a standard of care, the violation of which could be proof of negligence in actions by

third parties. *Schroer v. Synowiecki*, 231 Neb. 168, 435 N.W.2d 875 (1989).

Requisite intent may be inferred from defendant's acts and surrounding circumstances, so evidence was sufficient to support conviction. *State v. Smith*, 221 Neb. 406, 377 N.W.2d 527 (1985).

The Nebraska Liquor Control Act does not create a civil cause of action in favor of third parties for violation of this section, nor is such violation evidence of negligence. *Holmes v. Circo*, 196 Neb. 496, 244 N.W.2d 65 (1976).

City ordinance prohibiting sale of intoxicating liquors to minors is not void as being inconsistent with state statute. *Bodkin v. State*, 132 Neb. 535, 272 N.W. 547 (1937).

Procuring alcoholic liquor for a minor is a general intent crime, and there is sufficient evidence to convict a defendant even when he or she did not intend for a minor to obtain the alcohol which the defendant purchased. *State v. Butzke*, 7 Neb. App. 360, 584 N.W.2d 449 (1998).

53-180.01 Minor misrepresenting age; unlawful.

No minor shall obtain, or attempt to obtain, alcoholic liquor by misrepresentation of age, or by any other method, in any tavern or other place where alcoholic liquor is sold.

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(2), p. 664.

53-180.02 Minor; prohibited acts; exception; governing bodies; powers.

Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or

upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Source: Laws 1951, c. 174, § 1(3), p. 664; Laws 1955, c. 205, § 1, p. 584; Laws 1957, c. 233, § 1, p. 792; Laws 1965, c. 323, § 1, p. 915; Laws 1967, c. 337, § 1, p. 904; Laws 1969, c. 440, § 2, p. 1473; Laws 1980, LB 221, § 3; Laws 1980, LB 848, § 18; Laws 1981, LB 124, § 4; Laws 1984, LB 56, § 2; Laws 1991, LB 344, § 62; Laws 2001, LB 114, § 4; Laws 2007, LB573, § 11.

Circumstantial evidence can be sufficient to sustain a conviction of a minor in possession in violation of this section. When relying upon circumstantial evidence, it is not necessary for the State to disprove every hypothesis but that of guilt. One accused of a crime may be convicted on the basis of circumstantial evidence if, taken as a whole, the evidence establishes guilt beyond a reasonable doubt. Circumstantial evidence is sufficient to support a conviction if such evidence and the reasonable inferences that may be drawn therefrom establish the defen-

dant's guilt beyond a reasonable doubt. *State v. Laue*, 225 Neb. 57, 402 N.W.2d 313 (1987).

Circumstantial evidence was sufficient to sustain a conviction under this section. *State v. Reeder*, 183 Neb. 425, 160 N.W.2d 753 (1968).

To sustain conviction, minor must have known or have been conscious of actual or constructive possession of intoxicating liquor. *State v. Eberhardt*, 176 Neb. 18, 125 N.W.2d 1 (1963).

53-180.03 Minor; sale or gift to; misrepresenting age; parent or guardian; duties.

No parent or guardian shall knowingly suffer or permit any minor, of whom he or she may be a parent or guardian, to violate the provisions of section 53-180.01 or 53-180.02.

Source: Laws 1951, c. 174, § 1(4), p. 664; Laws 1961, c. 258, § 6, p. 765.

53-180.04 Minors; warning notice; posting.

Every licensee of a place where alcoholic liquor is sold at retail shall display at all times in a prominent place a printed card with a minimum height of twenty inches and a width of fourteen inches, with each letter to be a minimum of one-fourth inch in height, which shall read as follows:

WARNING TO PERSONS UNDER 21
YOU ARE SUBJECT TO
NOTIFICATION OF PARENTS OR GUARDIAN
AND
YOU ARE SUBJECT TO A PENALTY OF UP TO
\$500 FINE
3 MONTHS IN JAIL
OR BOTH IF YOU ARE UNDER 21 AND YOU CONSUME,
PURCHASE, ATTEMPT TO PURCHASE,
OR HAVE IN YOUR POSSESSION
ALCOHOLIC LIQUOR IN THIS ESTABLISHMENT
AND
WARNING TO ADULTS
YOU ARE SUBJECT TO A PENALTY OF UP TO

LIQUORS

\$1000 FINE
1 YEAR IN JAIL
OR BOTH
IF YOU ARE 21 OR OVER AND YOU PURCHASE
ALCOHOLIC LIQUOR
FOR A PERSON UNDER 21
AND
WARNING TO PURCHASERS OF BEER KEGS
PROPER IDENTIFICATION AND PURCHASER'S SIGNATURE
ARE REQUIRED
LAWS OF THE STATE OF NEBRASKA

Source: Laws 1951, c. 174, § 1(5), p. 664; Laws 1963, c. 313, § 1, p. 943; Laws 1969, c. 440, § 3, p. 1474; Laws 1980, LB 221, § 4; Laws 1980, LB 848, § 19; Laws 1984, LB 56, § 3; Laws 1985, LB 493, § 1; Laws 1993, LB 332, § 7; Laws 2001, LB 114, § 5.

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.

This section provides the only penalty for violation of section 53-180. *Holmes v. Circo*, 196 Neb. 496, 244 N.W.2d 65 (1976).

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.

53-180.07 Minors; licensee charged with sale; defenses.

In any prosecution of or any proceeding against any licensee charged with having made a sale to a minor, proof of the following shall be an absolute defense to the charge:

(1)(a) The purchaser falsely represented in writing and supported with other documentary proof that he or she was of legal age to purchase alcoholic liquor;

(b) The appearance of such purchaser was such that an ordinary and prudent person would believe that such appearance conformed to any documentary description of appearance presented by the purchaser; and

(c) The seller was acting in good faith, in reliance upon the written representation, other documentary evidence, and the appearance of the purchaser, and in the belief the purchaser was of legal age to make such purchase; or

(2) The seller was acting with the knowledge of and in cooperation with a duly authorized law enforcement officer.

Source: Laws 1969, c. 437, § 2, p. 1467; Laws 1978, LB 386, § 9; Laws 1991, LB 344, § 63; Laws 1993, LB 561, § 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.

53-182 Repealed. Laws 1977, LB 93, § 1.

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.

53-184 Sale only in original package; refilling forbidden; exception.

No person except a manufacturer or wholesaler shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor. It shall be unlawful for any person to have in his or her possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor except in original packages. Nothing in this section shall prohibit the refilling of original packages of alcoholic liquor for strictly private use and not for resale.

Source: Laws 1935, c. 116, § 41, p. 401; C.S.Supp.,1941, § 53-341; R.S.1943, § 53-184; Laws 1991, LB 124, § 1; Laws 1991, LB 344, § 65.

53-185 Contract to sell for only one manufacturer or wholesaler; void.

No manufacturer or wholesaler shall enter into any contract with any person licensed to sell at retail whereby such licensee agrees not to sell any alcoholic liquor manufactured or distributed by any other manufacturer or wholesaler. Any provision in any contract which violates this section shall render the entire contract void, and no action shall be brought on such contract in any court.

Source: Laws 1935, c. 116, § 42, p. 401; C.S.Supp.,1941, § 53-342; R.S.1943, § 53-185; Laws 1991, LB 344, § 66.

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.**53-192 Transportation of liquor into state forbidden; when.**

A person or common carrier shall not haul or transport alcoholic liquor, whether by boat, airplane, automobile, truck, or other conveyance, in or into this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty, or license has not been paid. A person or common carrier shall not haul or transport alcoholic liquor, whether by boat, airplane, automobile, truck, or other conveyance, in or into this state, for personal use, unless the required labeling or gauging fee, tax, duty, or license has been paid, either in this state or the state where such alcoholic liquor was purchased.

Source: Laws 1935, c. 116, § 68, p. 410; C.S.Supp.,1941, § 53-368; R.S.1943, § 53-192; Laws 1991, LB 344, § 69; Laws 2000, LB 973, § 8.

53-192.01 Wholesale licensee; purchases and imports; restrictions.

A holder of an alcoholic liquor wholesale license shall purchase and import all alcoholic liquor from a primary American source of supply. For purposes of this section, primary American source of supply shall mean the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product, or the manufacturer's or owner's agent, who, if such liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

Source: Laws 1994, LB 1292, § 2.

53-193 Repealed. Laws 1991, LB 344, § 75.**53-194 Repealed. Laws 1991, LB 344, § 75.****53-194.01 Repealed. Laws 1983, LB 213, § 21.****53-194.02 Repealed. Laws 1983, LB 213, § 21.****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.

53-194.04 Sale of confections or candy; license requirements; label.

No person, firm, or corporation shall sell or offer for sale any confections or candy that contains more than one-half of one percent alcohol rendered unfit for beverage purposes unless licensed under the Nebraska Liquor Control Act.

Any confections or candy sold in this state that contains more than one-half of one percent alcohol rendered unfit for beverage purposes shall bear a label containing the following statement: Sale of this product to persons under the legal age for purchasing alcoholic liquor is unlawful.

Source: Laws 1988, LB 901, § 4.

53-195 Repealed. Laws 1991, LB 344, § 75.

53-196 Repealed. Laws 1978, LB 593, § 5.

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.

53-198 Places operated in violation of act; declared common nuisances; violations; penalty.

Any room, house, building, boat, structure, or place of any kind where alcoholic liquors are sold, manufactured, bartered, or given away in violation of the Nebraska Liquor Control Act or where persons are permitted to resort for the purpose of drinking same in violation of the act, or any place where such liquors are kept for sale, barter, or gift in violation of the act, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of the act. If it is proved that the owner of any building or premises has knowingly suffered the same to be used or occupied for the manufacture, sale, or possession of alcoholic liquors contrary to the provisions of the act, such building or premises shall be subject to a lien for and may be sold to pay all fines and costs assessed against the occupant of such building or premises for any violation of the act. Such lien shall be immediately enforced by civil action in any court having jurisdiction by the county attorney of the county wherein such building or premises is located or by one of the assistant attorneys general assigned to the commission when directed by the commission.

Source: Laws 1935, c. 116, § 76, p. 413; C.S.Supp.,1941, § 53-376; R.S.1943, § 53-198; Laws 1994, LB 859, § 9.

Sale of liquor by the drink outside corporate limits of city or village was a common nuisance. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958). holic liquors violated this section. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

Maintenance of place outside corporate limits of city where persons were permitted to resort for purpose of drinking alco-

53-199 Nuisance; abatement; procedure; owner or lessee may give bond.

The Attorney General, any one of the assistant attorneys general assigned to the commission when directed by the commission, or the county attorney in the county where such nuisance exists or is kept or maintained may maintain an action by injunction, in the name of the State of Nebraska, to abate and temporarily or permanently to enjoin such nuisance. The court shall have the right to make temporary and final orders as in other injunction proceedings. The plaintiff shall not be required to give bond in such action, and upon final judgment against the defendant, such court shall also order that such room, house, building, structure, boat, or place of any kind shall be closed and padlocked for a period of not less than three months nor more than two years and until the owner, lessee, tenant, or occupant thereof gives bond with sufficient surety to be approved by the court making the order, in the penal sum of not less than one thousand dollars, payable to the State of Nebraska and conditioned that no alcoholic liquors will thereafter be manufactured, possessed, sold, bartered, given away, furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with intent to sell, barter, give away, or otherwise dispose of the same, contrary to the Nebraska Liquor Control Act, and that he or she and his or her surety will pay all fines and costs assessed for any violation of the act. If any condition of such bond is violated, the whole amount may be recovered as a penalty for the use of the State of Nebraska; and in such suit on the bond, both the principal and surety shall be joined as party defendants, and satisfaction may be had from either of them. In such action a notice to nonresident defendants may be given by publication as authorized by

law under the code of civil procedure, or upon their agents for service in this state, if any.

Source: Laws 1935, c. 116, § 77, p. 413; C.S.Supp.,1941, § 53-377; R.S.1943, § 53-199; Laws 1994, LB 859, § 10.

Cross References

Service by publication, see sections 25-518.01 to 25-523.

Common nuisance arising from sale of liquor by drink outside city or village can be abated by injunction. State ex rel. Fitzgerald v. Kubik, 167 Neb. 219, 92 N.W.2d 533 (1958).

Court of equity has jurisdiction to padlock building and enjoin maintenance of nuisance by injunction for violation of Liquor

Control Act. State ex rel. Johnson v. Hash, 145 Neb. 405, 16 N.W.2d 734 (1944).

Premises outside corporate limits of city, where intoxicating liquors were habitually brought for consumption which owner encouraged by sale of setups, was a public nuisance. State ex rel. Johnson v. Hash, 144 Neb. 495, 13 N.W.2d 716 (1944).

(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.

It is a penal offense for owner and operator of a truck, who has not been designated as a carrier of alcoholic liquor or granted a permit, to transport from another state a cargo of

unstamped alcoholic liquors, consigned to a bonded warehouse in this state. State v. Hyslop, 131 Neb. 681, 269 N.W. 512 (1936).

53-1,101 Owner of premises or agent knowing of violations; penalty.

If the owner of the licensed premises or any person from whom the licensee derives the right to possession of such premises, or the agent of such owner or

person, knowingly permits the licensee to use such licensed premises in violation of the terms of the Nebraska Liquor Control Act, such owner, agent, or other person shall be deemed guilty of a violation of the act to the same extent as such licensee and be subject to the same punishment.

Source: Laws 1935, c. 116, § 64, p. 409; C.S.Supp.,1941, § 53-364; R.S.1943, § 53-1,101; Laws 1994, LB 859, § 11.

53-1,102 Violations by agent or employee of licensee; deemed act of licensee, when.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of the Nebraska Liquor Control Act by any officer, director, manager, or other agent or employee of any licensee, if such act is committed or omission is made with the authorization, knowledge, or approval of the licensee, shall be deemed and held to be the act of such employer or licensee, and such employer or licensee shall be punishable in the same manner as if such act or omission had been done or omitted by him or her personally.

Source: Laws 1935, c. 116, § 65, p. 410; C.S.Supp.,1941, § 53-365; R.S.1943, § 53-1,102; Laws 1994, LB 859, § 12.

53-1,103 False branding; penalty.

Any person who knowingly possesses, sells, ships, transports, or in any way disposes of any alcoholic liquor under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the package or other containers of such alcoholic liquor or who causes any such act to be done shall forfeit to the state such alcoholic liquor and such packages and containers and shall be subject to the punishment and penalties provided for violation of the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 66, p. 410; C.S.Supp.,1941, § 53-366; R.S.1943, § 53-1,103; Laws 1994, LB 859, § 13.

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 suspension 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

53-1,105 Sufficiency of charge of violation; sufficiency of proof.

In any indictment, information, affidavit, or complaint charging the violation of any of the provisions of the Nebraska Liquor Control Act, it shall be sufficient to charge that the accused unlawfully manufactured, sold, offered for sale, kept for sale, delivered, or otherwise unlawfully disposed of alcoholic liquor without any further or more specific description of such liquor, and proof of any kind of alcoholic liquor unlawfully manufactured, sold, offered for sale, kept for sale, delivered, or otherwise unlawfully disposed of shall be sufficient proof as to the character or kind of alcoholic liquor.

Source: Laws 1935, c. 116, § 71, p. 411; C.S.Supp.,1941, § 53-371; R.S.1943, § 53-1,105; Laws 1991, LB 344, § 72.

53-1,106 Charge of violation; sufficiency of allegations; second offense; proof; former conviction.

In any indictment, information, complaint, or affidavit charging the violation of any of the provisions of the Nebraska Liquor Control Act, it shall not be necessary to allege the quantity or kind of such alcoholic liquor further than to allege that it was alcoholic liquor. In case of sale, keeping for sale, or delivering, it shall not be necessary to set out the name of the person to whom sale or delivery has been made. In any prosecution for a second offense, it shall not be necessary to state in the indictment, complaint, or affidavit the record of the former conviction, but it shall be sufficient briefly to allege such conviction. In any prosecution for an offense, no indictment, information, complaint, or affidavit shall state or allege and no consideration shall be given to the record of a former filing of an indictment, information, complaint, or affidavit, or the record of a former conviction, which is four years old or older. Proof of sale, delivery, or unlawful disposition of alcoholic liquor to any person not authorized by the act to purchase or receive the same shall be sufficient to sustain the allegation of unlawful sale, delivery, or disposition.

Source: Laws 1935, c. 116, § 72, p. 411; C.S.Supp.,1941, § 53-372; R.S.1943, § 53-1,106; Laws 1978, LB 386, § 12; Laws 1991, LB 344, § 73.

53-1,107 Complaint, indictment, or information; contents; sufficiency.

In any indictment, information, complaint, or affidavit against any one or more individuals charging the violation of the Nebraska Liquor Control Act, separate offenses under the act may be joined in the same indictment, information, complaint, or affidavit and the accused may be prosecuted and convicted upon all or any of such counts so joined the same as upon separate indictments, information, complaint, or affidavits and judgment may be rendered on each count upon which there is a conviction. In any indictment, information, complaint, or affidavit for any violation of the act, it shall not be necessary to describe the place where the offense was committed except to allege that it was committed in the county wherein the prosecution was had unless the particular

place where the violation occurred constitutes one of specific ingredients of the offense and it shall not be necessary to negative any of the exceptions contained in the act or to state the day or the hour when the offense was committed unless the day or hour constitutes a special element or ingredient of the offense.

Source: Laws 1935, c. 116, § 73, p. 412; C.S.Supp.,1941, § 53-373; R.S.1943, § 53-1,107; Laws 1994, LB 859, § 14.

53-1,108 Search warrants issued on complaint; form.

Whenever complaint is made in writing, verified by affidavit, to any judge of any court having cognizance of criminal offenses, that complainant has just and reasonable grounds to believe and does believe that alcoholic liquor is manufactured, possessed, kept for sale, used, or transported in violation of the Nebraska Liquor Control Act, or any mash, still, or other property designed for the manufacture of alcoholic liquor is possessed in any premises which are not licensed under the act, particularly describing and designating such property in such complaint, the judge may issue a search warrant. No search warrant shall be necessary for the inspection or search of any premises licensed under the act. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process. Each complaint shall be substantially in the following form:

STATE OF NEBRASKA,)
) ss.
COUNTY OF)

COMPLAINT FOR SEARCH WARRANT

The complaint and affidavit of (name of complainant), of (his or her residence), made before (name of officer) one of the (official title of officer), in and for (county, city, or village, as the case may be), on this day of 20..., being first duly sworn, upon oath says: That he or she has just and reasonable grounds to believe, and does believe, that alcoholic liquor is now unlawfully (manufactured, possessed, used, disposed of, or kept for sale, or any mash, still, or other property designed for the illegal manufacture of alcoholic liquor is possessed therein, as the case may be), to wit: At and within a certain (here describe the house, building, premises, boat, vehicle, receptacle, or other place to be searched, with particulars as to the location sufficiently to identify it, stating the name of the person occupying the same, if known), in the (county, city, or village, as the case may be, of) in the county and state aforesaid; that the following are the reasons for his or her belief, to wit: (here insert the facts upon which such belief is based).

WHEREFORE he or she prays that a search warrant may issue according to law.

.....
.....
(Signature of complainant)

Subscribed and sworn to before me this day of 20...

.....
(Name of officer)

.....
(Official title of officer)

Source: Laws 1935, c. 116, § 78, p. 414; C.S.Supp.,1941, § 53-378; R.S.1943, § 53-1,108; Laws 1994, LB 859, § 15; Laws 2004, LB 813, § 24.

Cross References

Search warrants, in general, see sections 29-812 to 29-821.

53-1,109 Search warrants; contents; directed to peace officer.

If the judge before whom any such complaint is made is satisfied that there is reasonable cause for such belief, he or she shall issue a warrant directed to any peace officer having jurisdiction, commanding him or her to enter the house, building, premises, boat, vehicle, receptacle, or other place described and designated with particularity and to make diligent and careful search for alcoholic liquor manufactured, possessed, or kept for sale, contrary to the Nebraska Liquor Control Act, and if any such alcoholic liquor is found, to seize the same, together with the vessels containing the same, and all property, implements, furniture, and vehicles kept or used for the purpose of violating, or with which to violate any of the provisions of the act, and to bring the same and any and all persons, if there are any, in whose possession they are found, before the judge who issued the warrant or some other judge having cognizance of the case.

Source: Laws 1935, c. 116, § 79, p. 415; C.S.Supp.,1941, § 53-379; R.S.1943, § 53-1,109; Laws 1994, LB 859, § 16.

53-1,110 Arrest of persons found violating act.

Nothing shall be construed to prevent any officer whose duty it is to make arrests from arresting with or without a warrant any person or persons found violating the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,110; Laws 1994, LB 859, § 17.

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.

When an officer seizes alcoholic liquors under a search warrant, it is his duty to retain possession, where injunction to abate nuisance is pending, even though criminal complaint has been dismissed. *Picard v. Steinacher*, 135 Neb. 723, 283 N.W. 849 (1939).

53-1,112 Search warrant; return; form and contents.

Any officer executing a search warrant shall forthwith make his return thereon to the court or officer issuing such search warrant of the manner and date of his execution thereof, showing what, if anything, was seized and held by such search, together with the name of the owner or owners, if known, and shall attach to such return an accurate list or inventory of the articles and things so seized.

Source: Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,112.

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.

53-1,114 Transferred to section 53-134.04.

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.

This section defines which parties qualify as parties of record in the Nebraska Liquor Control Commission's proceedings. Thus, it defines which parties are "parties of record" that must be included in the district court's review of the commission's

proceedings pursuant to section 84-917 of the Administrative Procedure Act. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

53-1,116 Appeal; procedure.

Any order or decision of the commission granting, denying, suspending, canceling, revoking, or renewing or refusing to suspend, cancel, revoke, or renew a license, special designated permit, or permit for the sale of alcoholic liquor, including beer, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1935, c. 116, § 90, p. 423; C.S.Supp.,1941, § 53-390; R.S.1943, § 53-1,116; Laws 1955, c. 207, § 1, p. 585; Laws 1976, LB 413, § 4; Laws 1980, LB 848, § 22; Laws 1983, LB 213, § 20; Laws 1984, LB 947, § 5; Laws 1986, LB 911, § 8; Laws 1988, LB 352, § 93; Laws 1988, LB 1089, § 29; Laws 1989, LB 781, § 16; Laws 1989, LB 780, § 14; Laws 1991, LB 344, § 74; Laws 1993, LB 183, § 18; Laws 1999, LB 267, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

This section, as amended by 1993 Neb. Laws, L.B. 183, is unenforceable. *Marting v. Nebraska Liquor Control Comm.*, 250 Neb. 134, 548 N.W.2d 326 (1996).

In proceedings in error, a reviewing court determines whether the liquor control commission acted within its jurisdiction and whether there is sufficient evidence as a matter of law to support the decision. *2301 Leavenworth v. Nebraska Liquor Control Comm.*, 244 Neb. 247, 505 N.W.2d 708 (1993).

The portion of this section amended by 1986 Neb. Laws, L.B. 911, is declared unconstitutional. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

For appeals pursuant to subsection (5) of this section, the district court may not disturb the decision of the Liquor Control Commission unless it was arbitrary and unreasonable. *R.D.B., Inc. v. Nebraska Liquor Control Comm.*, 229 Neb. 178, 425 N.W.2d 884 (1988).

Where district court sets aside order which denied issuance of liquor license, it should remand with directions to issue license. *Hadlock v. Nebraska Liquor Control Commission*, 193 Neb. 721, 228 N.W.2d 887 (1975).

The review of the discretion of the Nebraska Liquor Control Commission on appeal applies to the findings of fact and all applications of the law, including the penalty assessed. *Eleven Eighteen Co. v. Nebraska Liquor Control Commission*, 191 Neb. 572, 216 N.W.2d 720 (1974).

The statutory pattern for judicial review varies even for different types of decisions of the same agency. *The 20's Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).

On trial de novo, courts should not reverse order of Nebraska Liquor Control Commission unless its action was unreasonable or arbitrary. *T & N P Co., Inc. v. Nebraska Liquor Control Commission*, 189 Neb. 708, 204 N.W.2d 809 (1973).

Under prior law, the procedure for appeal under this section is not applicable for an order of suspension by the Nebraska Liquor Control Commission, the procedure for such appeal being prescribed by section 84-917. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).

Under prior law, a suspension is not a revocation and is not governed by this section. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

Under prior law, appeal to the courts is not provided from an order granting or refusing to grant a transfer of location of business. *City of Lincoln v. Nebraska Liquor Control Commission*, 181 Neb. 277, 147 N.W.2d 803 (1967).

Cited in making comparison of powers and duties of Liquor Control Commission with those of heads of executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

53-1,117 Repealed. Laws 1991, LB 344, § 75.

53-1,118 Transferred to section 53-101.05.

53-1,119 Local law, ordinance, resolution, or rule; penalty for drinking or intoxication; prohibited.

(1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent subsection (1) of this section.

Source: Laws 1978, LB 593, § 2.

53-1,120 Alcohol-related offenses; law, ordinance, resolution, or rule; effect.

(1) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(2) The fact that a person is intoxicated or incapacitated by alcohol shall not prevent such person from being arrested or prosecuted for the commission of any criminal act or conduct not enumerated in subsection (1) of this section.

(3) No provision of such sections shall prevent such person from being taken into custody under the provisions of the Nebraska Mental Health Commitment Act as an alcoholic person who presents the risks enumerated in section 71-908.

(4) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, even though the arrested person may be intoxicated or incapacitated by alcohol.

Source: Laws 1978, LB 593, § 3; Laws 1993, LB 370, § 45; Laws 2004, LB 1083, § 99.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

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.

53-1,122 Compliance checks; participation by minors; when.

In order to further the public policy of deterring minors from illegally obtaining or consuming alcoholic liquor, persons under twenty-one years of age may be authorized to assist duly authorized law enforcement officers to determine compliance with sections 53-180 and 53-180.02. Such compliance checks shall be conducted pursuant to guidelines adopted and promulgated by the Nebraska State Patrol with input from the commission. Unless a person is an emancipated minor at least eighteen years of age, no person under twenty-one years of age shall be authorized to participate or assist law enforcement officers in such compliance checks without the written consent of his or her parents or legal guardian.

Source: Laws 2001, LB 114, § 7.

ARTICLE 2**BEER DISTRIBUTION**

Section

- 53-201. Purpose of sections.
- 53-202. Definitions, where found.
- 53-203. Advertising, defined.
- 53-204. Agreement, defined.
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- 53-210. Retaliatory action, defined.
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- 53-213. Supplier, defined.
- 53-214. Transfer of the wholesaler's business, defined.
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- 53-218. Supplier; agreements; prohibited acts; changes or termination; procedures; quality control; temporary service interruption.
- 53-219. Wholesaler's business; transfer; restrictions.
- 53-220. Supplier; violations; compensation to wholesaler.
- 53-221. Wholesaler; waiver of rights prohibited; dispute settlements.
- 53-222. Applicability of sections; transfer of business; effect on agreements.
- 53-223. Civil actions authorized; damages; jurisdiction.

53-201 Purpose of sections.

The purpose of sections 53-201 to 53-223 is to provide fair, efficient, and competitive distribution of beer by (1) regulating the termination, expiration, and renewal of distribution agreements between beer suppliers and beer wholesalers, (2) promoting a distribution system in which each beer wholesaler will devote reasonable efforts and resources to sales, distribution, and quality control of the beer it sells, (3) promoting the continued availability of good quality beer for the consumers of Nebraska through orderly marketing and vigorous interbrand competition, (4) preventing a beer supplier from unfairly depriving a beer wholesaler of the value of the investment the wholesaler made in its business in terms of money, time, effort, and skill, and (5) controlling the sale of malt beverages in this state and facilitating the lawful and orderly marketing of malt beverages pursuant to the police powers of this state.

Source: Laws 1989, LB 371, § 1.

53-202 Definitions, where found.

For purposes of sections 53-201 to 53-223, the definitions found in sections 53-203 to 53-215 shall be used.

Source: Laws 1989, LB 371, § 2.

53-203 Advertising, defined.

Advertising shall mean the commercial use of media forms used to make consumers aware of or familiar with the supplier's trademark, trade name, logo, slogan, colors, signs, or product. The term media forms shall include, but not be limited to, television, radio, newspaper, billboards, and point-of-sale signs produced by the supplier for use by the wholesaler. The terms promote, promotional, promotion, market, and marketing shall be considered separate and distinct from advertising in meaning and application.

Source: Laws 1989, LB 371, § 3.

53-204 Agreement, defined.

Agreement shall mean any agreement between a wholesaler and a supplier, whether oral or written, by which a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier.

Source: Laws 1989, LB 371, § 4.

53-205 Ancillary business, defined.

Ancillary business shall mean a business owned by a wholesaler, by a substantial stockholder of a wholesaler, by a substantial partner of a wholesaler, or by a substantial member of a limited liability company, the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement, or a business owned by a wholesaler, by a substantial stockholder of a wholesaler, by a substantial partner of a wholesaler, or by a substantial member of a limited liability company which recycles empty beverage containers.

Source: Laws 1989, LB 371, § 5; Laws 1993, LB 121, § 322.

53-206 Control of a wholesaler's business, defined.

Control of a wholesaler's business shall mean that combination of ownership interests which legally or in practical effect has the power to determine the policies under which the wholesaler's business shall be operated and shall include, but not be limited to, any change of ownership of twenty-five percent or more interest in the wholesaler's business or any change in the form of business entity being utilized by the wholesaler, including, but not limited to, a change from a sole proprietorship to a corporation.

Source: Laws 1989, LB 371, § 6.

53-207 Designated member, defined.

Designated member shall mean the spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest in a wholesaler who inherits the deceased individual's ownership interest under the terms of the deceased individual's will, who has otherwise succeeded the deceased

individual in the wholesaler's business, or who inherits such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual having an ownership interest in a wholesaler, the term shall mean the person appointed by the court as the conservator of such individual's property. The term shall also include the appointed and qualified personal representative and the testamentary trustee of a deceased individual having an ownership interest in a wholesaler.

Source: Laws 1989, LB 371, § 7.

53-208 Good faith, defined.

Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Source: Laws 1989, LB 371, § 8; Laws 2005, LB 570, § 2.

53-209 Reasonable qualifications, defined.

Reasonable qualifications shall mean the standard of the reasonable criteria established and consistently used by the supplier for similarly situated Nebraska wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four months prior to the proposed transfer of the wholesaler's business or for similarly situated Nebraska wholesalers who have changed managers or designated managers during a period of twenty-four months prior to the proposed change in the manager or successor manager of the wholesaler's business.

Source: Laws 1989, LB 371, § 9.

53-210 Retaliatory action, defined.

Retaliatory action shall include, but not be limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith.

Source: Laws 1989, LB 371, § 10.

53-211 Sales territory, defined.

Sales territory shall mean an area of exclusive sales responsibility for the brand or brands and quality thereof granted to a wholesaler by a supplier as designated in an agreement between them.

Source: Laws 1989, LB 371, § 11.

53-212 Substantial stockholder, substantial partner, and substantial member, defined.

Substantial stockholder, substantial partner, or substantial member shall mean a stockholder of, partner in, or member of the wholesaler who owns fifty percent or more of the capital stock of a corporate wholesaler or of the partnership or the limited liability company.

Source: Laws 1989, LB 371, § 12; Laws 1993, LB 121, § 323.

53-213 Supplier, defined.

Supplier shall mean a manufacturer or importer of beer licensed by the State of Nebraska.

Source: Laws 1989, LB 371, § 13.

53-214 Transfer of the wholesaler's business, defined.

Transfer of the wholesaler's business shall mean the voluntary sale, assignment, or other transfer (1) of all or control of the wholesaler's business, (2) of all or substantially all of the assets of the wholesaler, or (3) of all or control of the capital stock of the wholesaler, including the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler.

Source: Laws 1989, LB 371, § 14.

53-215 Wholesaler, defined.

Wholesaler shall mean a wholesaler of beer licensed by the State of Nebraska.

Source: Laws 1989, LB 371, § 15.

53-216 Supplier; prohibited acts.

A supplier shall not:

(1) Fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the wholesaler and designates a specific, exclusive sales territory. Any agreement which is in existence on April 18, 1989, shall be renewed in a manner consistent with sections 53-201 to 53-223, and the provisions of such sections may be incorporated by reference in the agreement. Nothing in such sections shall prevent a supplier from making a one-time appointment, for a period not to exceed ninety days, of a wholesaler to temporarily service a sales territory not designated to another wholesaler until such time as a wholesaler is appointed by the supplier. The wholesaler who is designated to service the sales territory during the period of temporary service shall not be in violation of such sections and, with respect to the temporary sales territory, shall not have any of the rights provided under sections 53-218 and 53-220. The temporary service period may be extended beyond ninety days by the Nebraska Liquor Control Commission if justifiable circumstances exist as determined by the commission;

(2) Fix, maintain, establish, or unduly influence the price at which a wholesaler shall be required to sell any beer;

(3) Enter into an additional agreement with any other wholesaler for or to sell to any other wholesaler the same brand or brands of beer in the same sales territory or any portion thereof or to sell directly to any retailer in this state;

(4) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler, except that a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated Nebraska wholesalers having an agreement with the supplier;

(5) Coerce or attempt to coerce any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was canceled by the wholesaler in accordance with acceptable procedures;

(6) Coerce or attempt to coerce any wholesaler to do any illegal act or to violate any law, rule, or regulation by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler;

(7) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer or other products of any other supplier unless the acquisition of the brand or brands or products of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales, or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler. The supplier shall have the burden of proving that such acquisition of such other brand or brands or products would have such effect;

(8) Require a wholesaler to purchase one or more brands of beer or other products in order for the wholesaler to purchase another brand or brands of beer for any reason. A wholesaler that has agreed to distribute a brand or brands before April 18, 1989, shall continue to distribute the brand or brands in conformance with sections 53-201 to 53-223;

(9) Require a wholesaler to submit audited profit and loss statements, audited balance sheets, or audited financial records as a condition of renewal or continuation of an agreement. A supplier may require profit and loss statements, balance sheets, or financial records which are certified by the wholesaler or an officer thereof;

(10) Coerce, compel, or require a wholesaler to provide or divulge specific information regarding the wholesaler's individual accounts or customers or his or her exclusive relationship with them or coerce, compel, or require a wholesaler to provide specific information concerning competitive brands;

(11) Use the threat of losing or withholding its credit as a means of compelling a wholesaler to standards of performance in any area of business except that area directly relating to credit;

(12) Withhold delivery of beer ordered by a wholesaler or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith;

(13) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled, directly or indirectly, by a supplier;

(14) Willfully discriminate, directly or indirectly, in price, programs, or terms of sale offered to franchisees if the effect of such discrimination may be to substantially lessen competition or to give to one holder of a franchise any economic, business, or competitive advantage not offered to all holders of the same or similar franchise. This subdivision shall not govern dock prices;

(15) Take any action against a wholesaler who files a complaint regarding an alleged violation by the supplier of a federal, state, or local law, rule, or regulation in retaliation for such complaint;

(16) Restrict or inhibit, directly or indirectly, the right of free association among wholesalers for any lawful purpose;

(17) Require or prohibit, without just cause, any change in the manager or successor manager of any wholesaler who has been approved by the supplier as of or subsequent to April 18, 1989. If a wholesaler changes an approved manager or successor manager, a supplier shall not require or prohibit the

change unless the person selected by the wholesaler fails to meet the reasonable qualifications for managers of Nebraska wholesalers of the supplier, which reasonable qualifications previously have been consistently applied to similarly situated Nebraska wholesalers by the supplier. The supplier shall have the burden of proving that such person fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers;

(18) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent, or unreasonably delay for a period of sixty days or more the transfer of the wholesaler's business if the proposed transferee is a designated member; or

(19) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or approval of, or unreasonably delay for a period of sixty days or more after receipt of all material information reasonably requested of the wholesaler a response to a request by the wholesaler for, any transfer of a wholesaler's business if the proposed transferee meets the reasonable qualifications required by the supplier for similarly situated Nebraska wholesalers. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications have been consistently applied to similarly situated Nebraska wholesalers.

Source: Laws 1989, LB 371, § 16.

53-217 Wholesaler; prohibited acts.

A wholesaler shall not:

(1) Fail to devote such efforts as are required in the agreement between the supplier and wholesaler within the supplier's designated sales territory relating to the sale and distribution of the supplier's brand or brands of beer which the wholesaler has been granted the right to sell or distribute;

(2) Sell or deliver beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of beer, except that during a period of temporary service interruption impacting a particular sales territory, a wholesaler who normally services the impacted sales territory shall file with the Nebraska Liquor Control Commission and give to the affected supplier written notice designating the specific wholesaler or wholesalers, not disapproved by the supplier, who will service the sales territory during the period of temporary service interruption and the approximate length of time of the service interruption. Each wholesaler designated to temporarily service a sales territory shall be a wholesaler who has a current agreement with a supplier for the brand or brands affected. When the temporary service interruption is over, the wholesaler who normally services the sales territory shall notify the commission, the supplier, and the wholesaler or wholesalers servicing the sales territory on a temporary basis of this fact in writing, and any wholesaler servicing the sales territory on a temporary basis shall cease servicing the sales territory upon receipt of the notice. A wholesaler who is designated to service a sales territory during a period of temporary service shall not be in violation of sections 53-201 to 53-223 and, with respect to the sales territory, shall not have any of the rights provided under sections 53-218 and 53-220; or

(3) Transfer his or her business without giving the supplier written notice of intent to transfer the business and, when required by sections 53-201 to 53-223, receiving the supplier's approval for the proposed transfer. Consent or approval from the supplier shall not be required for any transfer of the wholesaler's business to a designated member or any transfer of less than control of the wholesaler's business. The wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

Source: Laws 1989, LB 371, § 17.

53-218 Supplier; agreements; prohibited acts; changes or termination; procedures; quality control; temporary service interruption.

(1) Notwithstanding any agreement and except as otherwise provided for in sections 53-201 to 53-223, a supplier shall not amend or modify an agreement, cause a wholesaler to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement unless the supplier has:

(a) Satisfied the applicable notice requirements of subsection (3) of this section;

(b) Acted in good faith; and

(c) Good cause for the amendment, modification, forced resignation, cancellation, termination, nonrenewal, or discontinuance.

(2) For each amendment, modification, cancellation, termination, nonrenewal, or discontinuance, the supplier shall have the burden of proving that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance.

(3) Notwithstanding any agreement and except as to new products and as otherwise provided in this section and in addition to the time limits set forth in subdivision (4)(e) of this section, the supplier shall furnish written notice of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance of an agreement to the wholesaler not less than thirty days before the effective date of the amendment, modification, cancellation, termination, nonrenewal, or discontinuance. The notice shall be sent by certified mail and shall contain:

(a) A statement of intention to amend, modify, cancel, terminate, not renew, or discontinue the agreement;

(b) A statement of the reason for the amendment, modification, cancellation, termination, nonrenewal, or discontinuance; and

(c) The date on which the amendment, modification, cancellation, termination, nonrenewal, or discontinuance shall take effect.

(4) Notwithstanding any agreement, good cause shall exist for the purposes of a cancellation, termination, nonrenewal, or discontinuance under subdivision (1)(c) of this section when:

(a) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier;

(b) The supplier first acquired knowledge of the failure described in subdivision (a) of this subsection not more than twenty-four months before the date notification was given pursuant to subsection (3) of this section;

(c) The wholesaler was given notice by the supplier of failure to comply with the agreement within twenty-four months of such failure;

(d) The wholesaler was afforded a reasonable opportunity to assert good faith efforts to comply with the agreement within the time limits provided for in subdivision (e) of this subsection; and

(e) The wholesaler has been afforded thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure such noncompliance in accordance with the plan.

(5) Notwithstanding subsections (1) and (3) of this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement immediately upon written notice given in the manner and containing the information required by subsection (3) of this section if:

(a) The wholesaler becomes insolvent, files or has filed against it a petition under any bankruptcy or receivership law, makes an assignment for the benefit of creditors, or is dissolved or liquidated and such action materially affects the wholesaler's ability to remain in business;

(b) The wholesaler's state or federal license is revoked or suspended by the appropriate regulatory agency and the wholesaler cannot service the wholesaler's sales territory for more than sixty-one days;

(c) The wholesaler or a partner, a member, or an individual who owns ten percent or more of the partnership, the limited liability company, or the stock of a corporate wholesaler has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier. An existing stockholder, partner, or member or a designated member shall have, subject to the provisions of sections 53-201 to 53-223, the right to purchase the partnership interest, the limited liability company member interest, or the stock of the offending partner or stockholder, and if the sale is completed prior to conviction, the provisions of this subdivision shall not apply; or

(d) The supplier and wholesaler agree to a termination.

(6) Notwithstanding subsections (1), (3), and (4) of this section, upon not less than fifteen days' written notice given in the manner and containing the information required by subsection (3) of this section, a supplier may cancel, terminate, fail to renew, or discontinue an agreement if:

(a) There was intentional fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its producers. The supplier shall have the burden of proving intentional fraudulent conduct relating to a material matter on the part of the wholesaler;

(b) The wholesaler failed to confine its sales of a brand or brands to retailers in its designated sales territory. This subdivision shall not apply if there is a dispute between two or more wholesalers as to the boundaries of the assigned territory and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers;

(c) A wholesaler who has failed to pay for beer ordered and delivered in accordance with established terms with the supplier fails to make full payment within two business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier;

(d) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member or pursuant to a loan

agreement or debt instrument, without prior written notice to the supplier and has failed, within thirty days from the receipt of written notice from the supplier of its intent to terminate on the ground of such transfer, to reverse the transfer of the wholesaler's business;

(e) A wholesaler intentionally has made a transfer of his or her business, other than a transfer to a designated member, although the wholesaler has prior to the transfer received from the supplier a timely notice of disapproval of the transfer in accordance with sections 53-201 to 53-223; or

(f) The wholesaler intentionally ceases or ceases for a period of more than thirty-one days to carry on business with respect to any of the supplier's brand or brands previously serviced by a wholesaler in its sales territory designated by the supplier unless such cessation is due to a force beyond the control of the wholesaler or to a labor dispute and the wholesaler has made good faith efforts to overcome such events. This subdivision shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

(7) Notwithstanding subsections (1), (3), (5), and (6) of this section, a supplier may cancel, terminate, not renew, or discontinue an agreement upon not less than thirty days' written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler. Nothing in this section shall prohibit a supplier from (a) upon not less than thirty days' written notice, discontinuing the distribution of any particular brand or package of beer or (b) conducting test marketing of a new brand of beer or of a brand of beer which is not currently being sold in this state if the supplier has notified the Nebraska Liquor Control Commission in writing of its plans to test market. The notice to the commission shall describe the market area in which the test will be conducted, the name or names of the wholesaler or wholesalers who will be selling the beer, the name or names of the brand of beer being tested, and the period of time, not to exceed eighteen months, during which the testing will take place.

(8) Each wholesaler who sells beer to a retailer in this state shall service for the purpose of quality control all the beer it sells to that retailer. Each wholesaler shall, to the extent permitted by the Nebraska Liquor Control Act and the rules and regulations adopted and promulgated pursuant to such act:

(a) Rotate the beer it sold to a retailer no less frequently than may be specified from time to time by the brand owner so that beer produced first will be sold first;

(b) Clean and maintain tap equipment and provide related services as may be specified from time to time by the brand owner;

(c) Remove and replace with the same kind of beer any beer it sold to a retailer which has not been resold to a consumer within the time limits specified by the brand owner; and

(d) Provide whatever additional quality control services and comply with whatever additional quality control requirements are specified in writing from time to time by the brand owner, subject to the conditions that those services and requirements are reasonable and are reasonably related to promotion of quality control and that the wholesaler has received written notice of the services to be provided and the requirements to be satisfied and has been granted a reasonable time within which to comply.

(9) Except in the event of a temporary service interruption, a wholesaler shall not sell beer (a) to a retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer to consumers or who the wholesaler knows or reasonably should know does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer or (b) to any person who the wholesaler has reason to believe will sell or supply all or part of such beer to any retailer who does not have a location within the wholesaler's sales territory at which the retailer is entitled to resell beer. During a period of temporary service interruption impacting a particular wholesaler's sales territory, the wholesaler who normally services the sales territory shall file with the Nebraska Liquor Control Commission and serve on his or her suppliers a written notice stating that a temporary service interruption has occurred and indicating the anticipated duration of the temporary service interruption. After receiving such notice the supplier may designate another wholesaler or wholesalers to service the sales territory during the period of temporary service interruption. After the temporary service interruption, the wholesaler who normally services the sales territory shall file with the commission and serve on each wholesaler providing temporary service and each supplier a written notice stating that the temporary service interruption has ended. Each wholesaler providing temporary service shall cease servicing the sales territory after receiving such notice.

Source: Laws 1989, LB 371, § 18; Laws 1993, LB 121, § 324.

Cross References

Nebraska Liquor Control Act, see section 53-101.

53-219 Wholesaler's business; transfer; restrictions.

(1) Upon written notice of intent to transfer the wholesaler's business, any individual owning or personal representative of a deceased individual who owned an interest in a wholesaler's business may transfer the wholesaler's business to a designated member or to any other person who meets the reasonable qualifications required by the supplier for Nebraska wholesalers. The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of wholesaler's rights under the agreement, to a designated member except as provided in this subsection and shall not be withheld or unreasonably delayed to a proposed transferee other than a designated member who meets such reasonable qualifications. The supplier shall have the burden of proving that the proposed transferee fails to meet such reasonable qualifications and that the qualifications are consistently applied to Nebraska wholesalers by the supplier. A designated member or transferee shall not be qualified as a transferee without the written approval or consent of the supplier if such proposed transferee:

(a) Has been insolvent, has filed a voluntary or involuntary petition under any bankruptcy or receivership law, or has executed an assignment for the benefit of creditors;

(b) Has had a license issued under the Nebraska Liquor Control Act revoked or suspended for a period of sixty-one days or more;

(c) Has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the goodwill or interest of the wholesaler or supplier; or

(d) Has had an agreement involuntarily canceled, terminated, not renewed, or discontinued by a supplier for good cause.

(2) The supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member or if the transferee other than a designated member meets the reasonable qualifications required by the supplier for Nebraska wholesalers. When the transferee is other than a designated member, the supplier may, in good faith and for good cause related to the reasonable qualifications, refuse to accept the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement. The supplier shall have the burden of proving that it has acted in good faith and that there was good cause for failure to accept or consent to the transfer of the wholesaler's business or the assignment of wholesaler's rights under the agreement.

Source: Laws 1989, LB 371, § 19.

Cross References

Nebraska Liquor Control Act, see section 53-101.

53-220 Supplier; violations; compensation to wholesaler.

A supplier that, in violation of section 53-218 or 53-219, (1) has amended, modified, canceled, terminated, or refused to renew any agreement, (2) has caused a wholesaler to resign from an agreement, or (3) has interfered with, prevented, or unreasonably delayed or, when required by sections 53-201 to 53-223, has unreasonably withheld or unreasonably delayed consent to or approval of any assignment or transfer of a wholesaler's business shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business, including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include, but not be limited to, any goodwill. Nothing in such sections shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of the wholesaler's business.

Source: Laws 1989, LB 371, § 20.

53-221 Wholesaler; waiver of rights prohibited; dispute settlements.

A wholesaler may not waive any of the rights granted in sections 53-201 to 53-223, and the provisions of any agreement which would have such an effect shall be null and void. Nothing in such sections shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

Source: Laws 1989, LB 371, § 21.

53-222 Applicability of sections; transfer of business; effect on agreements.

(1) Sections 53-201 to 53-223 shall apply to agreements in existence on April 18, 1989, and agreements entered into or renewed after such date.

(2) A transferee of a wholesaler that continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer. A transfer of a wholesaler's business which requires the supplier's consent or approval but is disapproved by the supplier shall be null and void.

(3) A successor to a supplier that continues in business as a supplier shall be bound by all terms and conditions of each distribution agreement that the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state.

Source: Laws 1989, LB 371, § 22.

53-223 Civil actions authorized; damages; jurisdiction.

(1) If a supplier engages in conduct prohibited under sections 53-201 to 53-223, a wholesaler with whom the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under such sections, a supplier with whom the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages reasonably incurred as the result of the prohibited conduct.

(2) A supplier who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by a wholesaler as a result of the violation. A wholesaler who violates any provision of such sections shall be liable for all actual damages, all court costs, and, in the court's discretion, reasonable attorney's fees incurred by the supplier as a result of the violation.

(3) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to such sections.

(4) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of such sections. If the court grants injunctive relief or issues a temporary restraining order, bond shall be posted.

(5) The remedies provided by such sections are not exclusive, and nothing contained in such sections shall abolish any cause of action or remedy available to the supplier or the wholesaler existing on April 18, 1989.

(6) Any legal action taken under such sections or relating to a dispute arising out of an agreement or breach thereof or over the provisions of an agreement shall be filed in a state or federal court located in Nebraska, which state court is located in, or which federal court has jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

Source: Laws 1989, LB 371, § 23.

ARTICLE 3

NEBRASKA GRAPE AND WINERY BOARD

Section

53-301. Nebraska Grape and Winery Board; created.

53-302. Board; officers; terms; expenses.

53-303. Board; powers and duties.

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53-301 Nebraska Grape and Winery Board; created.

(1) The Nebraska Grape and Winery Board is created. The board shall consist of five members to be appointed by the Governor on a nonpartisan basis. 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 wine or grape production or research in this state. At least two board members shall be members of the Nebraska Winery and Grape Growers Association. In addition, the Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources or their designees shall be ex officio members of the board but shall have no vote in board matters.

(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 2000, LB 477, § 1.

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.

53-303 Board; powers and duties.

The duties and responsibilities of the Nebraska Grape and Winery Board include, but are not limited to, the following:

(1) To establish a public forum whereby any producer of wine, grapes, or other wine-producing agricultural products has the opportunity, at least once annually, to discuss with the board its policy and procedures;

(2) To 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) To authorize and approve the Department of Agriculture's expenditure of funds collected pursuant to section 53-304;

(4) To serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the wine industry; and

(5) To adopt and promulgate rules and regulations to carry out sections 53-301 to 53-305.

Source: Laws 2000, LB 477, § 3.

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.

53-305 Board; annual report.

The Nebraska Grape and Winery Board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the following:

(1) The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board; and

(2) A detailed explanation of all programs for which the board approved funding that fiscal year, pursuant to section 53-304, for the research, discovery, promotion, and development of programs for the growing, production, and marketing of Nebraska wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Each annual report shall be presented 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 2000, LB 477, § 5.

ARTICLE 4

MINOR ALCOHOLIC LIQUOR LIABILITY ACT

Section

- 53-401. Act, how cited.
- 53-402. Purposes of act.
- 53-403. Terms, defined.
- 53-404. Cause of action authorized.
- 53-405. Defense.
- 53-406. Limitation on cause of action.
- 53-407. Damages.
- 53-408. Statute of limitation.
- 53-409. Effect of settlement and release; offset; joint and several liability; right of contribution.

53-401 Act, how cited.

Sections 53-401 to 53-409 shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

Source: Laws 2007, LB573, § 1.

53-402 Purposes of act.

The purposes of the Minor Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages and to establish a legal basis for obtaining compensation for persons suffering damages as a result of provision or service of alcoholic liquor to minors under circumstances described in the act.

Source: Laws 2007, LB573, § 2.

53-403 Terms, defined.

For purposes of the Minor Alcoholic Liquor Liability Act:

- (1) Alcoholic liquor has the definition found in section 53-103.02;
- (2) Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor so as to diminish the person's ability to think and act in the manner of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances;

(3) Licensee means a person holding a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail;

(4) Minor has the definition found in section 53-103.23;

(5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;

(6) Service of alcoholic liquor means any sale, gift, or other manner of conveying possession of alcoholic liquor; and

(7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

Source: Laws 2007, LB573, § 3; Laws 2010, LB861, § 79.

Cross References

Nebraska Liquor Control Act, see section 53-101.

53-404 Cause of action authorized.

Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

(1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;

(2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Source: Laws 2007, LB573, § 4.

53-405 Defense.

It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

Source: Laws 2007, LB573, § 5.

53-406 Limitation on cause of action.

No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Source: Laws 2007, LB573, § 6.

53-407 Damages.

In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

Source: Laws 2007, LB573, § 7.

53-408 Statute of limitation.

Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

Source: Laws 2007, LB573, § 8.

53-409 Effect of settlement and release; offset; joint and several liability; right of contribution.

(1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

(2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Source: Laws 2007, LB573, § 9.

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.

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.